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VIA EMAIL

February 4, 2022

City of Toronto – Compliance Audit Committee
City Hall, 10th Floor West
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Julie Amoroso

Dear Madam:

RE: Faith Goldy - City of Toronto Compliance Audit
Meeting February 8, 2022
File No.52722

Please find enclosed the Response to William Molson CPA Report dated January 12, 2022 on behalf of the candidate Faith Goldy with respect to the Compliance Audit Committee meeting scheduled for February 8, 2022 at 2 p.m.

Also attached is a Brief of Authorities for use at the meeting.

Kindly confirm receipt of all documents provided.

Yours very truly,

Julian Heller

JULIAN HELLER
JH/der
Enclosure

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Municipal Election Compliance Audit of the Campaign Finances of Candidate Faith Goldy

Faith Goldy Response to William Molson CPA Report dated January 12, 2022

For Compliance Audit Committee meeting February 8, 2022 at 2p.m.

Date: February 4, 2022

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TO: **CITY OF TORONTO**
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Faith Goldy Response to William Molson CPA Report dated January 12, 2022
For submission to Compliance Audit Committee meeting February 8, 2022

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2.	Costs Submission of Faith Goldy dated November 2, 2018
3.	Costs Decision of Justice Cavanagh dated December 12, 2018
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TAB A

Faith Goldy Response to William Molson CPA Report dated January 12, 2022 For submission to Compliance Audit Committee meeting February 8, 2022

1. The Candidate for Mayor in the City of Toronto municipal election of 2018, Faith Goldy ("Goldy"), responds to the Report of William Molson, CPA, ("Molson") dated January 12, 2022 ("the Report") as set out below. Goldy requests that this response be filed with the City of Toronto Compliance Audit Committee ("CAC"), and that she and her counsel be provided an opportunity to address the CAC at its scheduled meeting on February 8, 2022.

I. INTRODUCTION

2. This response addresses the items set out in the Report as follows:

1. Campaign Expenses of $86,398.49, not reported
2. Campaign Contributions of $56,117.95, not reported
3. Campaign Contributions of $12,365.99 after December 31, 2018, not reported
4. Campaign Contributions of $101,118 from outside Ontario, not reported
5. Personal campaign contribution by the candidate of $81,388.63, being $56,388.63 in excess of the personal candidate limit of $25,000.

3. Goldy understands that these are the only non-compliance issues raised in the Report, but if there are any others which have been missed, Goldy requests the opportunity to fully address them in writing and in person at a subsequent CAC meeting called for that purpose.

4. Goldy accepts the need for all candidates to meet the requirements of the Municipal Elections Act ("MEA"), and will comply with all valid requests of CAC to ensure that this is accomplished, either by re-filing the Financial Statements submitted in correct form, by returning improper contributions, or by paying such sums as may be required to the City Clerk, or such additional steps and conditions as may be necessary.

5. Any errors which may have been made arose out of bona fide errors and inexperience, and do not reflect any attempt to avoid or subvert compliance with the MEA.

6. Where disagreements on the facts, or different views of the meaning of certain sections of the MEA from those expressed by Molson arise, these will be outlined below. Goldy did endeavour to cooperate fully with Molson and the CAC, and undertakes to continue to do so to ensure full compliance with the statutory regime is achieved. It is to be noted that the scope of the Report far exceeds the initial concern expressed by the Applicant Evan Balgord ("Balgord") which led to the compliance audit in the first place, and so many of the findings in the Report have only been known to Goldy since the release of the Report on January 12, 2022. Hence, some corrective measures have not yet been able to be implemented, and Goldy seeks the guidance of CAC as to what may be required.

7. Significantly, it should be noted that before inclusion of any of the items in the Report, Goldy spent only $130,345.91 on her campaign for Mayor, well below the allowed limit of $1,558,257.00 (Report para 2.5, page 3). The campaign ran a declared deficit of $6,205.14. If all other items are included as set out in the Report, Goldy would still be well below the allowable spending limits by over $1,000,000.

8. Note, as well, that many of the enumerated items are linked to the commencement of a lawsuit by Goldy against Bell Media. Accordingly, the items and amounts set out in the Report are essentially repetitions of the same issue, as will be set out below.

II. RESPONSES TO FINDINGS BY MOLSON

1. Campaign Expenses of $86,398.49 not reported

9. A lawsuit was commenced by Goldy against Bell Media to, inter alia, obtain an injunction requiring Bell Media to run certain campaign ads, and other more general relief. Clayton Ruby ("Ruby"), a well-known Toronto civil liberties counsel, acted for Goldy. While some of the relief claimed could reasonably be characterized as relating to the campaign, some relief could also be reasonably characterized as relating to broader issues for which Goldy was and is known as an independent advocate and media commentator, both before and after the municipal election.

A. Clayton Ruby Fees

10. With respect to the actual amounts in issue, Ruby invoiced $64,973.06. $9,973.06 was waived by Ruby. A total of $55,000 was paid:

a) $25,000 October 5, 2018

b) $5,000 October 9, 2018

c) $25,000 October 15, 2018

11. Only $25,000 was reported as being Goldy's personal contribution, as reflected in Goldy's 2018 T1 tax return provided to Molson during the audit. Both bank drafts used to pay Ruby were also provided to Molson. To the extent that these funds should have been handled differently, Goldy is prepared to accept that errors may have been made, but by way of explanation, these funds were provided on an urgent basis to enable commencement of the litigation to obtain a ruling before the end of the election campaign, and compliance steps may have been overlooked.

12. However, to the extent that this litigation was also related to Goldy's public advocacy activity, from which she generated income in her personal capacity, it is appropriate to allocate the costs between her campaign and herself personally. The fact that the amounts were the same, and transmitted both by similar bank drafts (though with different numbers), may have contributed to the initial filing error. The issue of Goldy's entitlement to allocate costs as between the campaign and herself personally will be addressed separately below.

13. The additional $5000 amount was derived from campaign donations by Goldy's father and grandmother, Michael and Fay Bazos, of $2500 each. These cheques should have been deposited into the campaign account per S 88.22(1)(b) of the MEA, but were, in the haste of the moment, cashed and paid to Ruby. Goldy's electronic file "Campaign Donations Complete" provided to the City and Molson, show these donations. The failure to flow the funds through the Campaign account was inadvertent.

14. The existence of the expense to Ruby was never hidden, nor the payments. If it is determined that the allocation as between personal and campaign is not justified, and that the contributions were in any way improper, Goldy will repay the contributions to the contributors, or

pay the appropriate amount to the City Clerk. (Her grandmother, Fay Bazos, has died. Therefore the payment to her will need to be made to her surviving son, Michael Bazos.)

15. The relevance of Goldy's personal income tax returns on this question of allocation, addressed by Molson at para 4.4.13-4.4.14, will be addressed below.

B. Costs Award of $43,117.90

16. The Application commenced by Goldy was dismissed on jurisdictional grounds by Justice Cavanagh on October 16, 2018. (See Reasons for Judgment attached, at paragraphs 80 – 84 in particular- Tab 1).

17. Justice Cavanagh concluded that the CRTC was the appropriate forum for adjudication of the issues raised by Goldy.

18. At paragraph 86 of his decision, Justice Cavanagh further stated:

> "I do not question that the application raises important issues for Ms. Goldy's electoral campaign as a candidate for Mayor of Canada's largest city, and for candidates, broadcasters and others in future elections, involving the ability of candidates to meaningfully participate in the electoral process and the ability of all voters to be reasonably informed of all possible choices before them. The importance of the issues does not, however, determine the jurisdictional issue that is before me."

19. And at paragraph 90 he stated:

> "Undoubtedly, given that the election will be held on Monday, October 22, 2018, for Ms. Goldy and Bell to obtain a fair and just adjudication of the issues raised in the application, whether before the CRTC or the Superior Court of Justice, would be extremely challenging."

20. Pursuant to Justice Cavanagh's Direction, the parties made written costs submissions.

21. In Goldy's costs submissions filed by Ruby, Goldy submitted that this was public interest litigation, for which there should be no costs payable by her. Paragraph 5 of her costs submissions states:

> "It is impossible to suggest that there is no public interest in challenging a denial to allow a particular candidate to purchase a political advertisement during an election period. The ability to speak is crucial to democracy." (See Costs Submission attached- Tab 2)

22. Justice Cavanagh ordered costs payable by Goldy personally in the amount of $43,117.90. (See Costs Decision attached- Tab 3)

23. On February 1, 2019 Goldy paid the costs award personally out of funds received by her personally through STRIPE payment processing in 2018 and 2019.

24. The STRIPE payments were declared as income on Goldy's T-1 returns for 2018 and 2019. (See T-1 returns attached- Tab 4).

25. The inclusion of that income was accepted by CRA as evidenced by the Notices of Assessments received for each of 2018 and 2019 (See Notices of Assessments attached- Tab 5).

26. Molson asked for and received Goldy's T-1 for 2018, but never asked for her 2019 tax return.

27. The costs payment of $43,117.90 was not included as an expense on Goldy's personal tax return for 2018 or 2019. However, while Goldy could re-file her 2019 T-1, to do so would have no material effect on her taxable income, as her 2019 taxes payable were only $1,583.03. (And similarly, for 2018 taxes payable were $1,096.48)

28. Alternatively, if the CAC determines that the costs payment by Goldy should have been declared as a campaign expense, Goldy will re-file her campaign financial statement accordingly. However, the costs order of the Superior Court would have been enforceable against Goldy in any event, whether the campaign account had funds or not. Therefore it must be considered as a

personal or business expense, and not a campaign expense. Otherwise any candidate facing an enforceable legal obligation would be in a Catch-22 and unable to comply with the MEA.

29. Moreover, in light of Justice Cavanagh's statement at paragraph 93 of his Reasons that the matters raised were of "significant public importance", it is submitted that this costs award be considered as a personal or business expense and not as a campaign expense, or, in the alternative, treated as 50-50 as between the campaign and personal/business. As Justice Cavanagh stated:

> "...The issues raised by this application, which would have been raised on an application to the CRTC, affect Ms. Goldy and Bell most directly, but they also have significant public importance...."

C. Other Expenses $3,307.53 (Paragraph 4.1.4. to 4.1.9 of the Report)

30. The amount of $3,307.53 is comprised of 6 items as follows:

(a)	Phone and/or internet expense after voting day	$ 144.08
(b)	Advertising	$1,028.50
(c)	Signs	$1,017.00
(d)	Expression of Appreciation	$ 25.00
(e)	Advertising	$ 292.50
(f)	Office Expenses	$ 800.00
TOTAL		$3,307.53

Items (a) to (e)

31. Goldy accepts items (a) to (e) in the aggregate amount of $2,507.53 as campaign expenses which should have been included on the campaign financial statement. They were all included in Goldy's submission to the City for a rebate. There was no attempt to conceal these expenditures, and no reason to do so as there was no benefit to be derived. These are just errors or oversights as explained, in part, below:

(a) **Phones $144.08** – This invoice was dated December 23, 2018. There is an item for $144.00 listed as such in the financial statement filed. The two invoices for November 23, 2018 and December 23, 2018 are attached and were provided to both Molson and the City. One may have been missed on the campaign statement. (Tab 6)

(b) **Advertising $1,028.50** – This was the balance of an invoice from Michael Onley. The previous amount paid had been included in the campaign statement.

(c) **Signs $1,017.00** – As noted in the Report footnote #7, there was an identical amount invoiced on the same day which was included. This one was omitted inadvertently.

(d) **Expression of Appreciation $25** – This was missed.

(e) **Advertising Noah Arnold $292.95** – This was prepaid as noted at paragraph 4.2.5 of the Report (along with item (d)) and was similarly just missed on the campaign statement.

Item (f) – Office Expenses - $800.00

32. Goldy disputes the inclusion of this amount. This was a virtual campaign without a campaign office. There were 2 meetings only of close advisors at Goldy's apartment at the outset of the campaign. No inclusion of any costs should be attributed to the campaign for this item.

33. There is no "value" to this as set out in S 88.19(3) 2 as a contribution. Starbucks, TD Bank, Loblaws, and others as well as coffee shops provide similar availability for no cost. There is no basis for the cost attributed by Molson.

2. Campaign Contributions of $56,117.95 Not Reported

Legal costs $55,000

34. This is the same issue as the legal expenses referred to above in Section 1.

35. The reference to $64,973.06 in paragraph 4.2.1. is incorrect as $9,973.06 was waived by Ruby as noted above.

(a) $50,000.00

36. $50,000.00 was received from a family member and has been returned in full. Molson was provided with a copy of the original cheque provided to Goldy at the examination of Goldy conducted on December 22, 2021.

37. As this money was required on an urgent basis to fund the emergency application before Justice Cavanagh in October 2018, a review of the applicable sections of the MEA and assurances of compliance with its provisions was not conducted.

38. However, to the extent that the application is considered partly or entirely personal or business, then only that percentage which is applicable to the campaign should be liable to be returned. In such event, a 50-50 allocation is appropriate if not entirely personal or business.

(b) $5,000.00 - $2,500.00 from each of Fay and Michael Bazos

39. This is also a replication of the expenses issue relating to Ruby as stated in Section 1.

40. As stated by Molson at paragraph 4.2.3., the failure to report these contributions may be remedied by filing an amended financial statement.

(c) Other Items - $1,117.95

41. This is also a repetition of 3 expenses noted above in Section 1.

(a) $800.00 for campaign office (item (f) above)

(b) $25.00 Expression of Appreciation (item (d) above).

(c) $292.95 Advertising (item (e) above).

42. The $800.00 is not an expense and is therefore not a contribution in kind.

43. The remaining $317.95 are expenses and should be included as such in a revised statement.

44. These amounts are, however, de minimis.

3. Campaign Contributions of $12,365.99 After December 31, 2018, Not Reported (And $500 Expense in Invoice After December 31, 2018)

Contributions

45. At the time, Goldy believed that the necessary straightforward paperwork to extend the campaign period had been filed. Therefore, no steps were taken to stop or return campaign contributions.

46. When the financial statement was filed in April 2019 it properly included only contributions within the campaign period. No thought was given to contributions after December 31, 2018 at the time. The bulk of the contributions were made in March 2019 and were not caught by the campaign accountant or campaign team. The Application in this matter was filed on April 1, 2019 and the CAC meeting that directed that an audit should take place occurred on April 29, 2019.

47. The specific transactions were not identified as problematic at the time. With the release of the Report on January 12, 2022, Goldy now responds as follows with respect to steps to be taken to cure this default:

A. Contributions

(a)	Josef Viezner		
	March 12, 2019	$ 580.00	Returned or to be returned
	March 23, 2019	$ 410.00	
	March 24, 2019	$ 10.00	
	March 24, 2019	$1,400.00	
		$2,400.00	
(b)	Joseph Genova		
	March 24, 2019	$1,700.00	Returned or to be returned
(c)	Alexandra Bonner		
	March 24, 2019	$2,400.00	Returned or to be returned
	Subtotal	$6,500.00	

B. Contributions ≤ $100

(d)	Cici Yu		
	January 10, 2019	$ 100.00	
(e)	Jeremy Baltazar		
	January 26, 2019	$ 25.00	
(f)	Alexandre Chidlovski		
	February 6, 2019	$ 30.00	
(g)	Ralph Rains		
	February 21, 2019	$ 10.00	
(h)	Jeremy Baltazar		
	February 26, 2019	$ 25.00	
	Subtotal	$ 190.00	These will be returned by email transfer.

C. "Missing" cheques

March 25, 2019 $5,575.99

This will be paid to the Clerk as no records remain as to the source of these funds, unless proof to the contrary is located.

TOTAL **$12,365.99**

48. For the purposes of this Compliance Audit, Goldy accepts the statement in the Report at paragraph 4.3.2 that these are contributions made after the formal end of the campaign (due to the oversight in not filing the request for an automatic extension before December 31, 2018) and must either be returned or paid to the City Clerk.

Expense of $500.00 – Alexandre Lavigne

49. The invoice dated March 20, 2019 referred to in paragraph 4.3.3. of the Report was for services incurred during the campaign, but invoiced after. This question was first raised by Molson on December 26,2021, and Goldy advised that she would be responding to this and other questions after completion of the Ukrainian Christmas holidays in mid-January. Notwithstanding this advice, Molson without warning issued the Report on January 12, 2022. (See correspondence between Molson and Goldy attached- Tab 7)

50. This is a valid campaign expense. This item was included in the campaign financial statement under "Salaries, benefits, honoraria, professional fees." If it was not included in the proper way in the campaign financial statement, a revised financial statement will be provided to rectify this error.

4. Campaign Contributions of $101,118. From outside Ontario, Not Reported.

51. Beginning at paragraph 4.4 of the Report, Molson discusses receipt of monies into Goldy's personal bank account in 2018 and 2019. However, Molson does not present or analyze any specific deposit to that account or make any determination as to the source of those funds.

52. Further, in paragraph 4.4.10 and Appendix A of the Report, Molson aggregates the deposits into the personal and campaign accounts on a semi-monthly (not bi-monthly) basis, but does not provide the individual entries, nor has he provided his working papers to justify his allocations despite a written request to him and the City by Goldy's counsel. (See attached letter from Julian Heller dated January 21, 2022 and Molson and City's response.- Tab 8)

53. Instead, Molson has purported to graph the contributions in each of the personal and campaign accounts, and to then extrapolate a conclusion without foundation. This constitutes unfounded speculation and not proof on a balance of probabilities nor an "apparent contravention".

54. It also prevents Goldy from making full answer and defence other than to make a blanket denial of the unfounded conclusions reached by Molson. Goldy will present below some examples of errors in Molson's approach and calculations.

55. It is to be noted that there are also errors in Appendix A in the far right column:

$ 18,128.24
$ 71,577.94
$ 13,979.83
$ 15,560.23
$119,246.24 not $119,226.24

56. In the time available since the release of the Report, however, Goldy has retained her accounting firm to verify some of the numbers set out by Molson and they have also examined the same bank statements relied on by Molson, and reached different results.

57. In particular, for the period after the campaign (January 1, 2019 forward) Goldy's accountants have calculated the total receipts to be **$19,242.05 less** as follows:

	January 1, 2019 to February 1, 2019	February 2, 2019 – March 31, 2019
Goldy's Accountants	$ 6,135.04	$ 4,162.96
Molson	$13,979.83	$15,560.23
Difference	($ 7,844.79)	($11,397.26)
Total Difference	$19,242.05	

58. This difference of $19,242.05 out of $29,540.06 for the post campaign period is a reduction of 65%.

59. With respect to the campaign period of July 27, 2018 to December 31, 2018 Goldy's accountants have identified deposits of $68,743.05 rather than the $71,577.94 specified by Molson, for a difference of ($2,834.89).

60. Of that amount of $68,743.05, $36,142.74 inclusive of HST was recognized as personal income in Goldy's T-1 for 2018, being $31,985.00 income net of HST, before expenses.

61. Deposits of $34,561.75 were not included in income in 2018 due to an oversight by Goldy in only reporting income from the STRIPE payment system. If necessary, Goldy will re-file her T-1 with CRA. As will be set out below, however, if the costs award of $43,117.90 is treated as an expense, either in whole or in part in 2018, that would lead to possible inclusion of additional income net of expenses of at most $6,500.00 with a negligible increase in taxes payable as a result thereof.

62. Similarly, STRIPE originating income in 2019 of $5,952.25 ($3,426.29 + $2,525.96) to March 31, 2019 is included in Goldy's 2019 T-1 income.

63. Deposits of $4,345.76 ($2,708.75 + $1,637.01) were inadvertently not included in income but could be included in any 2019 re-filing. This small amount was missed by Goldy in reporting her 2019 income.

Inappropriate Conclusions of "Corroboration"

64. Molson is factually incorrect in his assertion at paragraph 4.4.13 that none of the $71,577.94 (actually $68,743.05 as noted above) was reported by Goldy as income. In fact, $36,142.74 was included as income in 2018 as noted above, inclusive of HST.

65. Applying his own test, Molson on these facts must acknowledge that these are not campaign contributions. Similarly for the $5,952.25 STRIPE payments in 2019.

66. Therefore, on Molson's own analysis $34,181.30 + $5,952.25 = $40,133.55 should be deducted from the $79.041.06. (2018 +2019 deposits) This yields the following result:

Deposits	July 27, 2018-December 31, 2018	$68,743.05
	January 1, 2019-February 1, 2019	$ 6,135.04
	February 2, 2019-March 31, 2019	$ 4,162.97
Subtotal		$79,041.06
T-1 Income 2018/2019		-$40,133.55
Balance		**$38,907.51***

* For the detailed table showing this calculation, see attached.(Tab 9)

67. With respect to this balance of $38,907.51, this was unreported personal income. In the absence of evidence that these were intended by the contributors as a campaign donation, these should not be considered as campaign contributions.

68. There is no evidence of the source of the funds received by email transfer in Molson's Report.

69. Appendices B, C and D of the Report in fact show the opposite of what Molson says in his Report. These documents show declined contributions to the campaign, with an invitation to contribute to Goldy personally via email. This establishes that there was no intention on the part of the contributor by email to make a campaign donation. Rather, this was Goldy raising money as business income as disclosed in her tax returns. The reality is that social media personalities including so called "YouTubers" receive funds by virtue of their media and online presence. Goldy's declaration of that income in her tax returns, while imperfect, clearly establishes that distinction.

70. There is no contravention, "apparent" or otherwise.

71. Finally, Molson only requested Goldy's 2018 T-1 and not her 2019 return.

72. The alleged non-responsiveness referred to in paragraph 4.4.13 is inaccurate. Redacting of the document did not alter the amounts in certain fields although the placement of an electronic watermark may have interfered with Molson's ability to read the document provided. A non-watermarked copy of the 2018 T-2125 Statement of Business Income is attached hereto, as well as the 2019 version which Molson never asked for.

73. The attached email to a contributor from outside the province of Ontario shows that the campaign did attempt to screen out contributors from out of province. Molson does not mention that. (Tab 10)

74. Goldy also attaches the correspondence between Molson and her on December 26, 2021 reflecting the first request by Molson for clarification and Goldy's answer that she would comply in mid-January following her celebration of the Ukrainian Christmas holidays. For Molson to request a response on December 26, 2021,by then 3 years post-election, and expect an answer before January 12, 2022 is unfair and unrealistic. (Tab 7 above)

75. It is submitted that Molson's unfounded criticism and statements regarding lack of cooperation evinces an approach that is not objective, and shows a clear descent by Molson "into the arena" when, as auditor, he had a duty to remain above the fray.

5. Personal Campaign Contributions By The Candidate of $81,388.63 Being $56,388.63 In Excess of the Personal Candidate Limit of $25,000.00

76. At paragraph 5.2.2., Molson finds an excess contribution based on "additional campaign expenses of $86,398.49 as detailed at 4.1 above and additional identifiable contributions of $6,117.95 as detailed at 4.2 above", thereby increasing the deficit by approximately $80,000.00 to $86,485.68 plus $1,117.95 of Goldy's contributions (Footnote 14) for a total of $87,603.63.

77. The $1,117.95 relates to the disputed item of $800.00 for incidental use of Goldy's own apartment on 2 occasions, and $317.95 of pre-paid items, both set out at paragraphs 4.2.4 and 4.2.5..

78. This "apparent contravention" of the candidate contribution limit of $25,000.00 by $56,388.63 is just a restatement of the same disputed items related to the Ruby legal fees of $55,000.00, and the costs award of $43,117.90, dealt with in these submissions at item #1.

79. It is not a contravention as noted above.

III. DISCUSSION OF OPERATION OF MEA AND A CAMPAIGN IN DEFICIT

80. At paragraphs 5.1 and 5.1.6, Molson discusses the practical and legal consequences of a campaign in deficit, and opines on the application of a number of the legislative provisions, including the statement:

"In my view this is not a reasonable construction of the Act, as it would permit a candidate to 'enter by the back door, where the front door has been barred'."

81. Statements of opinion by an auditor as to the intended application or interpretation of legislation is inappropriate, and beyond the scope of an auditor required to determine the existence of "apparent contraventions".

82. Indeed, the lack of a "way out" for a candidate who faces an unsatisfied deficit on their campaign, after maxing out on their personal contribution, shows the logical inconsistency of Molson's approach, and the fundamental flaws in this aspect of the MEA.

83. For a campaign that cannot raise further funds in a 6 month extension, the MEA provides no solution to a candidate who wishes to pay the campaign's obligations or is obliged to pay legitimate creditors. This is particularly so when a court orders costs to be paid of $43,117.98 after the election, and near the end of the campaign period. If donors do not step up, the likely scenario for any candidates other than leading contenders, a candidate is left in a Catch-22 – pay the costs order and be forced to be in breach of the personal contribution limit of the MEA, or do not pay and face legal sanctions from the court.

84. Where the very issue in the court case is the ability of a candidate to advertise in order to raise their profile and raise funds, it would be a strange result indeed if payment of their legal fees and costs arising from that put the candidate offside the MEA and subject to further sanctions. Such an interpretation of the MEA may will be counter to the Charters of Rights and Freedoms and in particular the fundamental freedom of expression pursuant to Section 2 (b) of the Charter.

City of Toronto vs Ontario (Attorney General), 2021 SCC 34

IV. PURPOSE OF COMPLIANCE AUDIT PROCESS UNDER THE MEA AND MISUSE BY APPLICANT

85. As stated at the outset of these submissions, Goldy accepts the need to comply with the applicable rules of the MEA in order ensure fair and democratic elections.

86. Therefore, to the extent that errors need to be rectified by re-filing the financial statement with the City, or tax returns with CRA, Goldy is prepared to do so as part of her obligation to regularize any deficiencies.

87. To the extent that monies need to be returned to contributors or paid to the City Clerk, Goldy is prepared to do that.

88. There is no need to take further action and no need to have the City initiate any further legal proceedings to obtain compliance with the MEA.

89. It is submitted that compliance is the overriding objective of the legislation, and that can be achieved now that the auditor's report has been done, and this response received by the CAC. Because of the nature of the audit, and the complete lack of particularity of the original Application, the first that Goldy became aware of the issues raised in the auditor's report was with delivery of the Report on January 12, 2022.

Motive of Applicant

90. While Goldy stands with the legitimate purpose of the MEA, Goldy objects to the misuse of a regulatory mechanism intended to be politically neutral, as a partisan tool. That would be a dramatic and dangerous distortion of the legitimate aims of the MEA.

91. The original Application was filed by Balgord on April 1, 2019. Balgord is a former Chief of Staff to Mayor John Tory, Goldy's main opponent in the mayoralty race at issue. He was also at the time and still is the Executive Director of a lobby group called Canadian Anti-Hate Network.

In his Application, Balgord went far beyond the legitimate purpose of the MEA in calling for an audit.

92. In the first page, Balgord largely confines his argument to the direct provisions of the MEA.

93. However, for the next 1 ½ single spaced pages, Balgord excoriates Goldy for her political views in the most inflammatory manner possible, and concludes at page 3 of his Application by saying:

> "....Goldy is the most visible face of the alt-right neo-Nazi movement in Canada. As a result of her leveraging her municipal campaign fundraising...it appears to me that she used her campaign to build her personal brand...It would be an unsightly stain upon the reputation of our city, province and country to permit the conduct described above to go unexamined, let alone unprosecuted."

(Note that in accusing her of building her personal brand, Balgord in facts supports Goldy's contention that deposits to her personal account were properly treated as business income.)

94. On social media, Balgord has posted a message stating:

> "... I asked the leading candidates [in the mayoral race of 2018] to refuse any public events or debates that would include Goldy because of her background and what she represented."

95. And, finally, on Twitter since the release of the Report on January 12, 2022 the Anti-Hate Network of which Balgord is Executive Director has posted the following:

> "This was never about politics or money, as Faith Goldy claimed during the 2019 hearing. It was, and is, about countering neo-Nazis whenever and wherever they try to take up public space.".

And then in the next post on Twitter the Anti-Hate Network states:

> "If you want to help us celebrate this win, there is no better time to donate. A generous anonymous donor is matching your gifts until the end of January so that we can launch anti-hate education program in schools." (See attached posts and tweets. – Tab 11)

96. It is clear that the motivation of the Applicant is to use the legitimate regulatory compliance mechanisms for a political purpose to chase Goldy "whenever and wherever [she tries] to take up public space".

97. **That** is undemocratic, and contrary to the very purpose of the MEA.

V. LAW- ALLOCATION OF COSTS BETWEEN CAMPAIGN AND BUSINESS/PERSONAL USES ON "FAIR AND REASONABLE" BASIS

98. Section 88.19 of the Municipal Elections Act, ("MEA") says:

"...costs incurred for goods or services by or under the direction of a person **wholly or partially for use** in his or her election campaign are expenses." (Bold added)

99. Where costs are attributable to both a campaign and a business or personal use, an allocation may be assigned on a "fair and reasonable" basis.

University of Calgary vs The Queen 2015 TCC 321

Sun Life Assurance Company of Canada vs the Queen 2015 TCC 37

Maege vs The Queen 2006 TCC 117

100. The allocation is up to the candidate, provided that it is fair and reasonable and consistent.

Supra Sun Life, paragraph 24

101. The auditor is not entitled to replace the method of allocation employed by the candidate with one of the auditor's choosing, simply because the auditor believes it is a better or even the best method.

Supra Sun Life, paragraph 24

102. What is reasonable is not the subjective view of either party, but the view of an objective observer with a knowledge of all the pertinent facts.

Supra Sun Life, paragraph 38

103. Reasonableness is a question of fact and requires the application of a measure of judgment and common sense.

Supra Sun Life, paragraph 39

104. Molson is incorrect in stating at paragraph 3.3.2 of the Report that any expense, even if for something only minimally or partially used in the campaign, must be included in its entirety as a campaign expense.

105. Molson's unfounded legal opinion as to the meaning of Section 88.19(1) of the MEA fatally taints his conclusions throughout the Report.

106. Furthermore, Molson's statement that "the generally accepted conduct of municipal campaigns" is evidence not within his purview.

107. Indeed, Molson's own allocation of the reasonable costs of a portion of Goldy's apartment rent, shows that it is permissible to allocate costs for items used only partly for a campaign. (See paragraph 4.1.9. of the Report).

108. Therefore, the allocation of the Ruby legal fees expense of $55,000.00, and the costs award of $43,117.90 as between the campaign and Goldy's business activities is appropriate, and fair and reasonable. This then eliminates or drastically reduces the amounts set out in the Report of "apparent contraventions".

VI. RELIEF REQUESTED

109. Accordingly, Goldy requests that the Auditor Report dated January 12, 2022 be received and that no further legal proceedings be authorized.

110. Goldy is prepared to undertake such legitimate corrective steps as may be required, as set out above. To this end, Goldy would also be prepared, if desired by the CAC, to furnish proof of any payment required to be made as a condition of the motion to be passed receiving the Report and declining authorization for any further legal proceedings.

111. As an additional measure if necessary, the determination of the sufficiency of the proof of compliance should be dealt with by the City Clerk. In the alternative, sufficiency of proof may be considered at a subsequent meeting of the CAC convened solely for that purpose.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: February 4, 2022

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TAB 1

CITATION: Bazos v. Bell Media Inc., 2018 ONSC 6146
COURT FILE NO.: CV-18-00606558-0000
DATE: 20181016

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
FAITH BAZOS (aka FAITH GOLDY)	)	
Applicant	)	*Clayton Ruby* and *Stephanie DiGiuseppe*, for the Applicant
– and –	)	
BELL MEDIA INC.	)	
Respondent	)	*Steven G. Mason*, *Richard Lizius* and *Charlotte-Anne Malischewski* for the Respondent
	)	
	)	**HEARD:** October 15, 2018

CAVANAGH J.

REASONS FOR JUDGMENT

Overview

[1] The applicant Faith Bazos goes by the name Faith Goldy. Ms. Goldy is one of thirty-five candidates for Mayor of the City of Toronto in the upcoming municipal election that will take place on October 22, 2018.

[2] Bell Media Inc. ("Bell") is a Canadian broadcaster that owns and operates local television stations across Canada as well as certain discretionary programming services, including Cable Pulse 24 ("CP24").

[3] Ms. Goldy's team contacted CP24 in late August 2018 to inquire about purchasing advertising time to run electoral advertisements and, in response, she was contacted by an account executive for CP24 on August 22, 2018. Over the ensuing days, Ms. Goldy made arrangements with Bell to place political advertisements in respect of her candidacy for Mayor of Toronto to run on its CP24 television station.

[4] On September 26, 2018, CP24 notified Ms. Goldy that it would not be able to run the advertisements that were planned and that it would refund the money that she had paid for these advertisements.

[5] No reason was given by Bell for this decision at the time that it was communicated to Ms. Goldy.

[6] Bell has provided evidence on this application that it received over 80 written complaints and over 15 complaints by voicemail opposing the running of Ms. Goldy's advertisements on CP24, and that a number of advocacy groups posted messages on Twitter asking Bell not to run Ms. Goldy's advertisements and encouraging their followers to contact Bell on the subject. Bell provided evidence that Ms. Goldy is publicly known for political views that have been described as "far right" and "alt right". In its factum for the hearing of the preliminary issue of jurisdiction, Bell describes its decision not to complete its business transaction with Ms. Goldy as a "business decision".

[7] Ms. Goldy's evidence is that she believes that Bell refuses to run her advertisements because those with decision-making responsibilities at Bell do not agree with her political beliefs and wish to silence her.

[8] Ms. Goldy started to look for counsel to represent her in respect of Bell's decision on the same day that she was informed of this decision. She was initially not able to find counsel to represent her. She was only able to meet with her legal counsel on this application on October 3, 2018, and she was not able to complete arrangements to retain counsel until October 5, 2018, the Friday before the Thanksgiving weekend. Ms. Goldy commenced this application on Tuesday, October 9, 2018.

[9] On her application, Ms. Goldy seeks a declaration pursuant to rule 14.05(3)(d) of the *Rules of Civil Procedure* that Bell is required to allocate time for the broadcasting of her partisan political advertisements relating to her candidacy in the 2018 Toronto municipal election and a mandatory order requiring Bell to do so. In the alternative, Ms. Goldy seeks the same declaratory relief and mandatory order pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedom*. She also seeks this declaratory relief and a mandatory order pursuant to a contract with Bell.

[10] In support of her application, Ms. Goldy relies upon regulations passed by the Canadian Radio-television and Telecommunications Commission ("CRTC") pursuant to the federal *Broadcasting Act* that address the allocation of time for the broadcasting of advertisements of a partisan political character to rival candidates represented in an election. Ms. Goldy submits that under these regulations, she has a statutory right to purchase airtime from Bell on an "equitable basis" and that Bell breached her statutory right by refusing to provide airtime for her election advertisements.

[11] Bell objects to the jurisdiction of this court to adjudicate on Ms. Goldy's application. Bell submits that if Ms. Goldy wishes to enforce CRTC regulations against Bell, she should be seeking a mandatory order from the CRTC and that provincial superior courts do not have jurisdiction to interpret and apply CRTC regulations. Ms. Goldy disagrees, and submits that the

Ontario Superior Court of Justice has jurisdiction to hear this application and, in the circumstances, it should hear the application, otherwise access to justice will be denied.

[12] On Wednesday, October 10, 2018 counsel for the parties attended at Civil Practice Court and agreed that there would be a hearing in the afternoon on Monday, October 15, 2018, with a compressed timetable for exchange of materials, for determination of the following preliminary issues:

a. Does the Court, based on the circumstances of this case, have jurisdiction to grant the relief sought, and, if so, based on the factual matrix of this case, should it exercise its discretion to grant the relief sought, notwithstanding the existence of a specialized tribunal, the CRTC?

b. Are the remainder of the issues to be heard urgent in nature?

[13] For the following reasons, I conclude that the CRTC has exclusive jurisdiction to grant the relief sought on this application that involves the interpretation and enforcement of the CRTC regulations upon which Ms. Goldy relies for the relief she seeks. I conclude that Ms. Goldy's alternative claims for relief under s. 24(1) of the *Charter* are subject to the concurrent jurisdiction of the CRTC and this Court. I conclude that in respect of the claim for *Charter* relief, this court should not exercise its discretion to hear this part of the application. The entire application should be heard by the CRTC.

Analysis

[14] First, I will address the statutory and regulatory framework governing the allocation of advertising time to candidates during an election.

[15] I will then address the jurisdictional issue that the parties have agreed should be decided as a preliminary matter. This part of my analysis will follow the approach suggested by counsel for Ms. Goldy that involves answering the following questions:

a. Is the area with which the dispute is concerned one of concurrent, overlapping, or exclusive jurisdiction as between the Superior Court of Justice and the CRTC?

b. If the CRTC has exclusive jurisdiction in an area with which the dispute is concerned, is the essential character of the dispute within the area of exclusive jurisdiction?

c. If the essential character of the dispute is within an area of exclusive jurisdiction, is the remedy required one which the CRTC has the authority to grant?

d. If the dispute falls within an area of concurrent or overlapping jurisdiction, should the Court exercise its discretion to hear the matter notwithstanding the CRTC's jurisdiction?

[16] Finally, I will consider certain other matters that Ms. Goldy submits should influence my decision on the question of jurisdiction, specifically, (i) the subject matter of this application, in

particular, the importance of electoral integrity and freedom of expression; (ii) the importance of the availability of a process that ensures access to justice; and (iii) whether the grounds of urgency and emergency upon which Ms. Goldy relies should affect my decision on the jurisdictional issue and, if so, how these grounds should be considered in the factual circumstances of this case.

The statutory and regulatory framework governing the allocation of advertising time to candidates during an election

[17] The broadcasting policy for Canada is declared in s. 3(1) of the *Broadcasting Act*, S.C. 1991, c. 11 ("*Act*") which contains forty-two paragraphs and subparagraphs setting out the broadcasting policy objectives for Canada.

[18] Section 2(3) provides that the *Act* "shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings".

[19] Section 3(2) of the *Act* contains a further declaration that "the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority".

[20] This public authority is the CRTC.

[21] In the *Act*, "Commission" means the CRTC. Section 5(1) of the *Broadcasting Act* provides:

> Subject to this Act and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

[22] Section 5(2) of the *Act* provides:

> (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that
>
> (a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;
>
> (b) takes into account regional needs and concerns;
>
> (c) is readily adaptable to scientific and technological change;
>
> (d) facilitates the provision of broadcasting to Canadians;
>
> (e) facilitates the provision of Canadian programs to Canadians;

> (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and
>
> (g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

[23] Section 5(3) of the *Act* provides that the "Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

[24] Section 10(1) of the *Act* provides that the CRTC may, in furtherance of its objects, make regulations respecting matters specified in that subsection and respecting such other matters as the CRTC deems necessary for the furtherance of its objects. Section 10(1)(e) provides that the CRTC may make regulations "respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates".

[25] Pursuant to its authority under the *Act*, the CRTC made regulations cited as the *Television Broadcasting Regulations, 1987*, SOR/97-49. The *Television Broadcasting Regulations* govern the allocation of political broadcasts during an election period. In these regulations, the term "election period" means "in the case of a municipal election, the period beginning two months before the date of the election and ending on the date the election is held".

[26] The *Television Broadcasting Regulations* provide, in s. 8:

> During an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

[27] The CRTC also made regulations cited as the *Discretionary Services Regulations*, SOR/2017-159 under the *Act*. These regulations regulate the broadcast of discretionary services, which are Canadian specialty television channels which may be carried optionally by all digital subscription television providers.

[28] Section 6 of the *Discretionary Services Regulations* governs political broadcasts and provides:

> If, during an election period, a licensee provides time on its programming services for the broadcast of programs, advertisements or announcements of a partisan political character, the licensee shall allocate the time on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

[29] Pursuant to s. 6(2) of the *Discretionary Services Regulations*, in the case of a municipal election, "election period" means the period that begins two months before the day on which the election is to be held and that ends on the day on which the election is held.

[30] Section 12(1) of the Act provides:

> 12 (1) Where it appears to the Commission that
>
> (a) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order,
>
> (a.1) any person has done or is doing any act or thing in contravention of section 34.1, or
>
> (b) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part,
>
> the Commission may inquire into, hear and determine the matter.

[31] Section 12(2), under the heading "Mandatory orders" provides:

> The Commission may, by order, require any person to do, without delay or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do under this Part or any regulation, licence, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this part, to any such regulation, licence, decision or order or to section 34.1.

[32] Section 12(3) provides that any person who is affected by an order made pursuant to subsection 12 (2) may apply to the Commission to reconsider any decision or finding made by the panel, and the Commission may rescind or vary any order or decision made by the panel or may re-hear any matter before deciding it.

[33] Section 13(1) provides that any order made under subsection 12(2) may be made an order of the Federal Court or of any Superior Court of a province and is enforceable in the same manner as an order of the court. Under s. 13 (2), to make such an order in order of a court, the usual practice and procedure of the court in such matters may be followed or, in lieu thereof, the Commission may file with the register of the court a certified copy of the order, and thereupon the order becomes an order of the court.

[34] Section 31 of the *Act* provides for an appeal of decisions or orders of the CRTC:

> 31(1) Except as provided in this Part, every decision and order of the Commission is final and conclusive.

> (2) An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.

Does the Ontario Superior Court of Justice have jurisdiction to grant the relief sought?

[35] In *Allarco Entertainment 2008 Inc. v. Rogers Communications Inc.*, 2009 CarswellOnt 7666, Pepall J. (as she then was) heard a motion for an order staying or dismissing the plaintiffs' claim on the basis that the CRTC has sole jurisdiction over the subject matter of the motion. In her reasons, Pepall J. addressed, at paras. 25-26, the proper analytical framework for determination of this issue:

> The court should first determine the substance of the tribunal's jurisdiction. The central character of the dispute should then be examined to see if it falls within the tribunal's exclusive jurisdiction. Even if it does not, the court should determine whether reason exists for the tribunal to determine the dispute nonetheless.
>
> As stated by the Supreme Court of Canada in *Weber*, the exclusive jurisdiction of the tribunal is subject to the residual discretionary power of courts of inherent jurisdiction to grant remedies not possessed by the statutory tribunal. "It might occur that a remedy is required which the arbitrator is not empowered to grant. In below okay thanks such a case, the courts of inherent jurisdiction in each province may take jurisdiction ... What must be avoided, to use the language of Estey J. in *St. Ann-Nackawic Pulp & Paper Co. v. C.P.U., Local 219* [citation omitted], is a 'real deprivation of ultimate remedy'."

[36] The analytical approach proposed by Ms. Goldy corresponds closely with the framework for analysis expressed by Pepall J. in *Allarco*. I address each question in turn.

> (a) Is the area with which the dispute is concerned one of concurrent, overlapping, or exclusive jurisdiction as between the Superior Court of Justice and the CRTC?

[37] CP24 is a 24-hour television channel that is a discretionary service as defined by the CRTC and subject to the *Discretionary Services Regulations*, including s. 6 thereof. Bell submits that CP24 is not subject to the s. 8 of the *Television Broadcasting Regulations*. The language in these two regulations is very similar and, for the purpose of deciding the jurisdictional issue before me, I do not need to decide whether this submission is correct or not.

[38] Ms. Goldy submits that the area with which this dispute is concerned is not one where the CRTC enjoys exclusive jurisdiction. Ms. Goldy submits that this is an area of concurrent jurisdiction as between the Superior Court of Justice and the CRTC.

[39] With respect to Ms. Goldy's application for alternative relief under section 24(1) of the *Charter*, the Superior Court has jurisdiction: *International Fund for Animal Welfare, Inc. v. Canada (Attorney General)*, (1998), 157 D.L.R. (4th) 561 at para. 7.

[40] Bell submits that the CRTC also has jurisdiction to grant a *Charter* remedy. In support of this submission, Bell relies upon the decision of the Supreme Court of Canada in *R. v. Conway*, [2010] 1 S.C.R. 765 where, at paras. 78 and 81-82, Abella J. addressed the jurisdiction of administrative tribunals to grant *Charter* remedies:

> 78 The jurisprudential evolution leads to the following two observations: first, that administrative tribunals with the power to decide questions of law, and from whom constitutional jurisdiction is not been clearly withdrawn, have the authority to resolve constitutional questions that are linked to matters properly before them. And secondly, they must act consistently with the *Charter* and its values when exercising their statutory functions. It strikes me as somewhat unhelpful, therefore, to subject every tribunal from which a *Charter* remedy is sought to an inquiry asking whether it is "competent" to grant a particular remedy within the meaning of section 24(1).
>
> ...
>
> 81 Building on the jurisprudence, therefore, when a remedy is sought from an administrative tribunal under section 24(1), the proper initial inquiry is whether the tribunal can grant *Charter* remedies generally. To make this determination, the first question is whether the administrative tribunal has jurisdiction, explicit or implied, to decide questions of law. If it does, and unless it is clearly demonstrated that the legislature intended to exclude the *Charter* from the tribunal's jurisdiction, the tribunal is a court of competent jurisdiction and can consider and apply the *Charter* - and *Charter* remedies - when resolving the matters properly before it.
>
> 82 Once the threshold question has been resolved in favour of *Charter* jurisdiction, the remaining question is whether the tribunal can grant the particular remedy sought, given the relevant statutory scheme. Answering this question is necessarily an exercise in discerning legislative intent. On this approach, what will always be at issue is whether the remedy sought is the kind of remedy that the legislature intended would fit within the statutory framework of the particular tribunal. Relevant considerations in discerning legislative intent will include those that have guided the courts in past cases, such as the tribunal's statutory mandate, structure and function [citation omitted].

[41] With respect to the first question, it is clear that the CRTC has jurisdiction to decide questions of law. The *Act* does not demonstrate that Parliament intended to exclude the *Charter* from the CRTC's jurisdiction. With respect to the second question, the *Charter* remedy sought on this application, a declaratory order interpreting regulations made by the CRTC under authority conferred by the *Act* as requiring Bell to allocate time for Ms. Goldy's partisan political advertisements relating to her candidacy in the 2018 Toronto municipal election and a mandatory

order requiring Bell to do so, is one that, in my view, the CRTC can grant, given the relevant statutory scheme. For the purpose of this jurisdictional hearing, I conclude that the CRTC has jurisdiction to grant the *Charter* remedy sought by Ms. Goldy.

[42] Ms. Goldy accepts that the CRTC has jurisdiction to grant *Charter* remedies.

[43] The Superior Court of Justice has constant, complete and concurrent jurisdiction in respect of *Charter* remedies: *R. v. Mills*, [1986] 1 S.C.R. 863 at para. 62.

[44] Therefore, with respect to the *Charter* remedies that Ms. Goldy seeks on this application, the Superior Court of Justice has concurrent jurisdiction with the CRTC.

[45] With respect to her application under rule 14.05(3)(d) of the *Rules of Civil Procedure* for declaratory relief interpreting s. 8 of the *Television Broadcasting Regulations* and s. 6 of the *Discretionary Services Regulations* issued by the CRTC under the *Act* and a mandatory order in aid of enforcement of this declaration, Ms. Goldy submits that the *Act* does not explicitly or implicitly oust the jurisdiction of the Superior Court of Justice. Ms. Goldy submits that in the absence of clear and express statutory language to oust the jurisdiction of the provincial superior courts in favour of vesting exclusive jurisdiction in a statutory tribunal, concurrent jurisdiction is presumed.

[46] In support of this omission, Ms. Goldy points to s. 12(1) of the *Act* which provides that where "*it appears to the Commission* that any person has failed to do any act or thing that the person is required to do pursuant to ... any regulation issued by the Commission ... or has done or is doing any act or thing in contravention of ... any such regulation, ... the Commission *may* inquire into, hear and determine the matter" (Emphasis added). Ms. Goldy submits that this permissive language should be contrasted with the mandatory language found in s. 48(1) of the *Labour Relations Act* [1] that requires that every collective agreement *shall* provide for the final and binding settlement of differences by binding arbitration. The Supreme Court of Canada held in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 at para. 45 that given this language, the statute makes arbitration the only available remedy for such differences, and that where a dispute falls within the terms of the *Labour Relations Act*, there is no room for concurrent jurisdiction.

[47] The existence of the permissive word "may" in s. 12(1) of the *Act* in relation to the authority conferred on the CRTC to enforce its regulations does not support the conclusion advanced by Ms. Goldy that the jurisdiction of the provincial superior courts has not been ousted and that, consequently, the CRTC lacks exclusive jurisdiction in this area. This language means only that the CRTC has discretionary power in the exercise of its statutory jurisdiction. There is no language in s. 12(1) of the *Act* that clearly conveys, expressly or implicitly, that the CRTC's jurisdiction in the area of interpretation and enforcement of its regulations is or is not exclusive jurisdiction. Unlike the language in the *Labour Relations Act* that was considered in *Weber* and made arbitration the only remedy for differences arising from a collective agreement, the

---

[1] 48(1) *Every* collective agreement *shall* provide for the *final and binding settlement by arbitration*, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable (Emphasis added).

language used in s. 12 of the *Act* is not helpful to assist me to decide, one way or the other, whether the *Act* ousts the jurisdiction of the provincial superior courts in this area.

[48] Ms. Goldy relies upon the decision in *Bell Canada c. Aka-Trudel*, 2018 QCCA 829 in which the Québec Court of Appeal held that the Québec Superior Court had jurisdiction to hear an action based upon a private law cause of action between a consumer and a licensee under the *Telecommunications Act* involving late payment fees. The representative plaintiff was not relying upon a breach of the applicable statute or regulations in support of his claim. The CRTC had refrained from regulating the late fees associated with the telecommunication services that were in question in that case. The Québec Court of Appeal held that, as a result, the representative plaintiff necessarily had recourse to the courts. The Québec Court of Appeal, at para. 27, distinguished *Mahar v. Rogers Cablesystems Limited* (1995), 25 O.R. (3d) 690, which I will address below, and other cases that followed it, on the basis that in those cases, an analysis of the true nature of the remedies sought revealed that each, in its own way, invoked or infringed a legislative provision, decision or regulation of the CRTC. The facts in *Aka-Trudel* are clearly distinguishable from the facts in this case and, as the Québec Court of Appeal found, from the facts in *Mahar*.

[49] Ms. Goldy also relies upon the decision of the Supreme Court of Canada in *St. Ann-Nackawic Pulp & Paper Co. v. C.P.U., Local 219*, [1986] 1 S.C.R. 704 in support of her submission that the jurisdiction of the Superior Court of Justice has not been clearly ousted by the *Act*. In that case, the court made the following observations at para. 28 concerning the need for clear statutory language to oust the jurisdiction of the court:

> In a limited role, the ready access by the parties to the court system provided by the community for the disposition of differences however arising in the community, can itself be another bulwark against the deterioration of employer-employee understanding. The interlocutory injunction by summary process but of limited life, for example as governed by the *Judicature Act* of Ontario, now the *Courts of Justice Act, 1984* [citation omitted], finds its origin in this reality. It is, of course, open to the legislature to close this access, as it has done in the case of the privative clauses relating to the labour relations boards themselves. Where the legislature resolves to narrow the forum and the remedies otherwise available to the parties, the interpretive rules applied by the court should require the legislature to express its intent clearly. Where the legislature does not do so, the duty remains in the court to respond to a proper request to enjoin an activity such as a strike or lockout which offends the statute and the collective agreement, in short the entire system of labour relations as established by the legislature.

[50] Ms. Goldy submits that *St. Anne's* was considered and interpreted by the Supreme Court of Canada in A Weber, where McLachlin J. (as she then was) observed:

> Estey J. concluded [in *St. Anne's*] at p. 721 that subject to a residual discretionary power in courts of inherent jurisdiction over matters such as injunctions, concurrent proceedings were not available [in labour disputes].

Ms. Goldy submits that this interpretation suggests that the Superior Court of Justice enjoys an assumed or constant and concurrent jurisdiction in relation to injunctive remedies, unless the legislature takes that power away by express act.

[51] In *Okwuobi v. Lester B. Pearson School Board*, 2005 SCC 16, the Supreme Court of Canada considered the residual discretion of the Québec Superior Court to order an injunction in a case where parents sought access for their children to public instruction in English in Québec, and attempted to bypass the administrative appeal process before the Administrative Tribunal of Québec ("ATQ") as set out in the *Charter of the French Language*, CQLR c C-11. The Supreme Court of Canada upheld the decision of the lower court that the ATQ had exclusive jurisdiction to hear appeals in respect of entitlement to minority language education. The appellants argued that even if the ATQ has jurisdiction over the subject matter at hand, it lacks the ability to provide the remedies sought, including injunctive relief. The Supreme Court of Canada agreed that only the Superior Court or a judge thereof may issue an injunction, although it noted that the ATQ had been given broad remedial power to ensure that justice is done. The Supreme Court of Canada considered in this context the availability of injunctive relief in urgent situations, at paras. 51-53:

> 51 The legislature's intention to confer exclusive jurisdiction over the matter in issue on the ATQ should be respected to the greatest extent possible. However, the fact remains that an injunction is defined in art. 751 of the *Code of Civil Procedure* as "an order of the Superior Court or of a judge thereof". Thus, the Superior Court has exclusive jurisdiction to grant an injunction, in the strict sense of the word.
>
> 52 That said, an injunction is a discretionary remedy that courts have on many occasions declined to grant where other avenues of recourse were available (see D. Ferland and B. Emery, *Précis de procédure civile du Québec* (4th ed. 2003), vol. 2, at p. 435). We have accordingly been at pains in this judgment to emphasize the exclusive jurisdiction and broad remedial powers accorded to the ATQ. As a result, the Superior Court should exercise sparingly its discretion to award injunctive relief in minority language education claims. Such injunctive relief should be granted only to fill in the cracks in the administrative process, so to speak. In this way, injunctive relief can complement the administrative process rather than serving to weaken it.
>
> 53 As a result, recourse to urgent injunctive relief remains possible in certain circumstances, but it should remain the rare exception, rather than the rule. Seeking injunctive relief should not be allowed to develop into a means of bypassing the judicial process, or as P.-A. Gendreau et al. note in *L'injonction* (1998), at p. 201: [TRANSLATION] ". . . neither the injunction nor any other procedure may be used to short-circuit an administrative tribunal's exercise of its exclusive jurisdiction or to obtain a review of its decision ...".

[52] In my view, the case before me differs from *Okwuobi* in a material respect. In *Okwuobi*, the statute conferred general remedial jurisdiction to the tribunal to ensure justice is done, but the tribunal was not granted specific authority to grant relief in the nature of an injunction. In s.

12(2) of the *Act*, however, the CRTC is given statutory authority to, by order, require any person to do, without delay or within or at any time and in any manner specified by the CRTC, any act or thing that the person is or may be required to do under a regulation made or issued by the CRTC and the CRTC may, by order, forbid the doing or continuing of any such act or thing. A CRTC order can be readily made an order of a provincial superior court by simply filing a certified copy with the registrar of the court. There would be no need, except in a truly dire emergency, for a court to be required to "fill in the cracks" in an application for interpretation and enforcement of s. 8 of the *Television Broadcasting Regulations* or s. 6 of the *Discretionary Services Regulations* because, having regard to s. 12(2) of the *Act*, there are virtually no cracks to be filled from the perspective of the available remedies.

[53] The analytical approach taken by the courts to determination of whether the jurisdiction conferred on a statutory tribunal is concurrent, overlapping, or exclusive accepts that even where a tribunal is found to have exclusive jurisdiction, such as the exclusive jurisdiction of an arbitral tribunal to settle differences arising from a collective agreement, it might occur that a remedy is required which the arbitral tribunal is not empowered to grant. As McLachlin J. wrote in *Weber* at para. 62, "[i]n such a case, the courts of inherent jurisdiction in each province may take jurisdiction." The statement made by McLachlin J. in *Weber*, quoting Estey J. in *St Anne's*, that "[w]hat must be avoided ... is a 'real deprivation of ultimate remedy'" must be read and understood in the context in which the statement was made, in which McLachlin J. was addressing the specific circumstance where a remedy is required which the arbitrator is not empowered to grant. In this regard, see also *Allarco*, at para. 26.

[54] Ms. Goldy submits that the Superior Court of Justice has exclusive jurisdiction over the application for the mandatory injunction that she seeks. I do not regard the distinction between a mandatory injunction as an equitable remedy and the statutory remedy that the CRTC has jurisdiction to grant under s. 12(2) of the *Act* which, upon being made an order of the Superior Court, would have the same legal effect as a mandatory injunction, to be significant.

[55] For these reasons, I do not agree with Ms. Goldy that *St. Anne's, Weber* and *Okwuobi* are authority for the proposition that the existence of residual jurisdiction conferred upon a superior court of justice to grant injunctive relief, such as the jurisdiction described in *Okwuobi*, means that a statutory tribunal cannot hold exclusive jurisdiction in a given area and that the Superior Court and the CRTC must, therefore, hold jurisdiction concurrently.

[56] Ms. Goldy also relies upon *Chaudhary v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2015] O.J. No. 5438 (C.A.) in support of her submission that the CRTC lacks jurisdiction in this area. This case involved appeals by four immigration detainees from a decision denying jurisdiction to determine a challenge to their detentions by way of *habeas corpus*. The appellants' continued detention was confirmed through a series of 30 day reviews and a review decision was subject to judicial review in the Federal Court pursuant to the *Immigration and Refugee Protection Act*. The Court of Appeal in *Chaudhary* relied upon a decision of the Supreme Court of Canada in *May v. Ferndale Institution*, [2005] 3 S.C.R. 809 in which the court had considered five factors that militate in favour of concurrent jurisdiction by the Superior Court with the Federal Court. Rouleau J.A. acknowledged that the Federal Court has greater expertise in immigration matters than the superior courts and that in such matters, a superior court should defer to the Federal Court. However, he considered that the issues raised

by the appellants are fundamentally detention decisions and that the issues do not require the court to have expertise in immigration law. The appellants were allowed to exercise their Charter right to access *habeas corpus*.

[57] The five factors that were addressed in *Chaudhary* were (i) the choice of remedies and forums, (ii) the expertise that provincial superior courts, (iii) the timeliness of the remedy, (iv) local access to the remedy, and (v) the nature of the remedy and the burden of proof. Ms. Goldy submits that some of these factors apply in this case, and support a finding that the Superior Court of Justice has concurrent jurisdiction with the CRTC to hear this application.

[58] I disagree that the decision in *Chaudhary* affects the determination of whether the CRTC has exclusive jurisdiction in the area with which the dispute is concerned. The factors were considered only in relation to their relevance to the issue before the Court of Appeal, that is, whether the appellants were entitled to exercise a right to *habeas corpus* from the Superior Court. The subject matter of the case and the statutory framework are entirely different from those in relation to the issue of jurisdiction that is before me.

[59] Bell submits that the area with which this dispute is concerned involves the interpretation and enforcement by the CRTC of its own regulations and that it has long been the law of Ontario that this area is one of exclusive jurisdiction of the CRTC.

[60] Bell relies upon the decision of Sharpe J. (as he then was) in *Mahar v. Rogers Cablesystems Limited* (1995), 25 O.R. (3d) 690 and other cases that have followed this decision.

[61] In *Mahar*, the applicant brought an application pursuant to rule 14.05(3)(d) seeking a declaration that the respondent had reached the *Cable Television Regulations, 1986*, by failing to provide notice of certain fee changes. Rogers moved for an order staying the application, contending that the CRTC had exclusive jurisdiction over the matter. The applicant agreed that the CRTC would have jurisdiction to deal with the matter in its entirety but insisted that the Superior Court of Justice retained concurrent jurisdiction and that it should exercise its jurisdiction.

[62] Sharpe J. held that the regulations under the *Act* and the interpretation of those regulations are not only a substantive component of the applicant's case, but the focus of the relief that the applicant sought. Sharpe J. considered that to decide the case would require a detailed consideration and interpretation of those regulations and that this exercise would require consideration of how those regulations operate in the overall framework of the scheme established by the *Act* and by the regulations as that scheme is administered by the CRTC.

[63] Sharpe J. considered the statutory and regulatory framework in the context of the nature of the claim and the relief sought. In his analysis, Sharpe J. referred to s. 3(2) of the *Act* which he regarded as central to the issue of jurisdiction. Section 3(2) provides:

> It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

[64] Sharpe J. considered s. 3(2) in the context of other provisions of the *Act*, including s. 5 which contains a statutory direction to the CRTC that it "shall regulate and supervise all aspects of the Canadian broadcasting system". This direction is made subject only to Parliament (through the *Radiocommunication Act*) and to any directions issued by the Governor in Council under the Act. There is no suggestion in s. 5 that provincial superior courts are to play any role in the regulation of the Canadian broadcasting system.

[65] With respect to s. 3(2), Sharpe J. held:

> In my view, that section establishes, in effect, a principal of exclusivity. It clearly states Parliament's determination that the policies of the Act will best be achieved if a single independent public authority, namely, the C.R.T.C., is established to deal with all matters relating to those policies. The C.R.T.C. is a specialized body with particular expertise in the area. In my view, if this Court were to assume jurisdiction, it would violate the spirit, if not the letter, of s. 3(2). The statutory mandate of the C.R.T.C. is fortified by the case-law which has consistently given a broad and generous interpretation to its powers and authority.

[66] Sharpe J. also held that there should be a strong element of curial deference to decisions of the C.R.T.C. and that "where Parliament has created a statutory regime which includes both rights and a procedure for their resolution, there is at the very least a strong reluctance to permit jurisdiction to be divided between the specialized agency or tribunal in the courts or to permit overlapping or concurrent jurisdiction". Sharpe J. held that to decide the applicant's case would require him to consider the regulations upon which the applicant relied and interpret them having regard to their purposes and objectives and with a proper understanding of the underlying policies behind the regulations and in light of the overall regulatory context. Sharpe J. concluded at para. 35:

> In my view, the task of deciding this case has been specifically assigned by Parliament to the C.R.T.C. The principle established by the case-law, in particular the *Shaw* case, *supra*, of the deference due to the decisions of the C.R.T.C. on legal matters within its jurisdiction seems to me significant. It is true that this is not a case where review is sought of the decision of the C.R.T.C. nor is it a collateral attack on such a decision. In some ways, however, the case at bar presents a more serious challenge to the integrity of the regime established by Parliament. If the applicant's submissions were accepted and this Court were to decide the case, there would, in effect, be an alternate forum for the determination of an important aspect of the relationship between suppliers of cable services and subscribers. A superior court would be deciding that issue without the benefit of the opinion of the C.R.T.C. Because this is but one of ten provincial superior courts the spectre of various approaches from various provincial courts is raised. Assumption of jurisdiction by this court would not only evade the C.R.T.C., it would also remove the case from the authority of the Federal Court of Appeal which is mandated to review the C.R.T.C. The net result would be to disrupt the scheme envisaged by Parliament for the interpretation of the regulations, a scheme which includes scrutiny by a court exercising jurisdiction akin to that of a superior court.

[67] As was observed by Sharpe J. in *Mahar*, assumption of jurisdiction by a provincial superior court in a given case would remove the case from the authority of the Federal Court of Appeal to which the statutory mandate to review decisions of the CRTC was assigned. Sharpe J. noted that the result would be to "disrupt a scheme envisaged by Parliament for the interpretation of regulations" made under the authority of the Act, "a scheme which includes scrutiny by a court exercising jurisdiction akin to that of a Superior Court". I agree with these observations, which also support the conclusion that the CRTC has exclusive jurisdiction in the area of interpretation and enforcement of regulations made under the *Act*.

[68] The decision of Sharpe J. in *Mahar* has been followed by judges of the Superior Court of Ontario as well as by judges of the superior courts of other provinces: *Allarco Entertainment 2008 Inc. v. Rogers Communications Inc.*, 2009 CarswellOnt 7666 (S.C.J.); *B&W Entertainment Inc. v. Telus Communications Inc.*, 2004 CarswellOnt 4515 (S.C.J.); *LaRoque v. Societe Radio-Canada* 2009 CarswellOnt 4015; *MTS Allstream Inc. v. TELUS Communications*, 2009 ABCA 372; *Shaw Cablesystems (SMB) Ltd. v. MTS Communications Inc.*, 2006 MBCA 29; and *Penney v. Bell* Canada, 2010 ONSC 2801.

[69] In addition to granting broad jurisdiction to the CRTC to regulate and supervise all aspects of Canadian broadcast policy, Parliament directed that the jurisdiction of the CRTC to do so must be exercised in accordance with the numerous broadcasting policy objectives set out in section 3(1) of the *Act*. The Federal Court of Appeal has described the adjudication process by which the CRTC must have regard to these "sometimes conflicting" policy objectives in implementing broadcasting policy as "polycentric", involving numerous participants with opposing interests: *Société Radio-Canada v. Métromédia Cmr Montréal Inc.*, 1999 CanLII 8947 (Fed. C.A.), at para. 5. The Supreme Court of Canada has confirmed that a specialized tribunal such as the CRTC is entitled to curial deference where it acts within its area of expertise and jurisdiction: *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739 at para. 30.

[70] Ms. Goldy submits that the principle that curial deference that may be owed to decisions of the CRTC need not be considered on this application because there has been no decision made by the CRTC to which deference should be afforded. I disagree that this principle is not a factor to be considered in determining whether a tribunal has exclusive jurisdiction in an area, even where no CRTC decision was made. The reason that deference is afforded is precisely because of the specialized expertise of the tribunal. In my view, Parliament must be taken to have intended that a dispute with an essential character that falls within an area of specialized expertise of a statutory tribunal to which curial deference is afforded should be taken to the tribunal, to be adjudicated according to the regime provided for by statute, and not to a court.

[71] It is clear that the area with which the dispute between Ms. Goldy and Bell on this application involves the interpretation and enforcement of s. 8 of the *Television Broadcasting Regulations* and s. 6(1) of the *Discretionary Services Regulations*. I agree with the conclusion of Sharpe J. in *Mahar* that s. 3(2) of the *Act*, particularly when read together with s. 5 of the *Act*, establishes a "principle of exclusivity" by which Parliament expressed that the policies of the *Act* will best be achieved if a single independent public authority, the CRTC, is established to deal with all matters relating to those policies and that if this court were to assume jurisdiction in this area, it would violate the spirit, if not the letter, of s. 3(2). The conclusion reached by Sharpe J. in

Mahar applies directly to this case, and I rely upon this decision to answer the first question with respect to the jurisdictional issue before me.

[72] For these reasons, I conclude that the area with which the dispute between Ms. Goldy and Bell on this application is concerned is within the exclusive jurisdiction of the CRTC.

(b) If the CRTC has exclusive jurisdiction in an area with which the dispute is concerned, is the essential character of the dispute within the area of exclusive jurisdiction?

[73] Ms. Goldy submits that the decision of Sharpe J. in *Mahar* is distinguishable because the applicant in *Mahar* conceded that the CRTC would have jurisdiction to deal with the matter in its entirety, including the element of the claim which was based on the regulations and the element of the claim which was based on the alleged "background law" or common law right to notice, whereas no such concession is made in on this application.

[74] I disagree that this is a material distinction. The significance of the concession made by the applicant in *Mahar* was that the CRTC would have the jurisdiction to deal with this matter in its entirety. In this case, Ms. Goldy accepts that the CRTC has jurisdiction to grant a *Charter* remedy, the alternative ground upon which Ms. Goldy seeks declaratory and injunctive relief. In addition, Ms. Goldy accepts that the CRTC has jurisdiction, she says concurrent jurisdiction with the Superior Court of Justice, to interpret the regulations at issue and make declaratory and mandatory orders. That the remedies that Ms. Goldy seeks arise from her contractual dealings with Bell does not alter the fact that the CRTC has jurisdiction to deal with Ms. Goldy's application in its entirety. This is not simply a private contractual dispute between Ms. Goldy and Bell. Ms. Goldy acknowledges that her relationship with Bell flows through the contract by virtue of the CRTC regulations and the *Charter*. I disagree with Ms. Goldy's submission that this dispute would not involve a detailed consideration of the regulations that are relevant to this dispute. In order to decide Ms. Goldy's claims in contract, the adjudicator would have to interpret and apply the CRTC regulations, including through consideration of what is "equitable" in these circumstances, having regard to the many policy objectives in s. 3(1) of the *Act*.

[75] Ms. Goldy submits that the issues which Sharpe J. in *Mahar* held were within the exclusive jurisdiction of the CRTC are properly characterized as "routine regulatory matters", whereas to determine this application on its merits will require the regulations to be interpreted in a manner consistent with the *Charter* and common law rights and values such as freedom of expression, democratic rights and freedoms, electoral procedures, principles of equity, and the specific equities at play during an electoral period. Ms. Goldy submits that these principles are squarely within the competence of the Superior Court of Justice and fall outside the traditional ambit and the regular practice of the CRTC. Ms. Goldy submits that this is effectively another way of saying that the essential character of the dispute between the parties in this case does not fall within the area of the exclusive jurisdiction of the CRTC, as found in *Mahar*.

[76] I disagree with Ms. Goldy's submissions in this regard. First, administrative tribunals, including the CRTC, must act consistently with the *Charter* and its values when exercising their statutory functions: *Conway* at para. 78. Second, under the *Act*, the CRTC is required to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the

broadcasting policy set out in s 3 (1). Section 3(1) declares as the broadcasting policy for Canada numerous broad objectives including, for example, that the Canadian broadcasting system should "serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada", "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity", "serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society", and "be readily adaptable to scientific and technological change".

[77] The CRTC, as the regulator that made the regulations that are at issue on this application, and as the single independent public authority mandated by the *Act* to regulate and supervise the Canadian broadcasting system, has the experience and expertise that allows it to understand the social, economic, cultural and political ramifications of its decisions and to implement broadcasting policy based upon this experience and expertise.

[78] I take note of the fact that the CRTC issued a public notice (CRTC 1988-142) on September 2, 1988 in which it made reference to the fact that it had sought public comment on election campaign broadcasting through a public notice which posed questions on specific aspects of election campaign broadcasting; questions related to equitable time allocations, treatment of various types of elections, coverage, on-air personalities as candidates, and the responsibilities of rebroadcasting stations. According to this public notice, some twenty-nine organizations and individuals submitted comments. In this public notice, the CRTC addressed the underlying rationale for the policy that was adopted with respect to election campaign broadcasting and made the following statements:

> It is the broadcaster's duty to ensure that the public has adequate knowledge of the issues surrounding an election and the position of the parties and candidates. The broadcaster does not enjoy the position of a benevolent censor is able to give the public only what it "should" know. Nor is it the broadcaster's role to decide in advance which candidates are "worthy" of a broadcast time.
>
> From this right on the part of the public to have adequate knowledge to fulfil its obligations as an informed electorate, flows the obligation on the part of the broadcaster to provide equitable - fair and just - treatment of issues, candidates and parties. It should be noted that "equitable" does not necessarily mean "equal". But, generally, all candidates and parties are entitled to some coverage that will give them the opportunity to expose their ideas to the public.
>
> ...
>
> The Commission acknowledges that each licensee's situation is unique. The Commission has no firm rules to cover all aspects of election campaign broadcasting; to some extent it will have to deal with situations on a case-by-case basis.

[79] This public notice is a statement only and has no force as a legislative act. Nevertheless, this public notice reveals that the CRTC has gathered information in relation to policy

considerations with respect to election advertising as part of its continuing regulatory role, and that it regards itself as the regulatory entity which is called upon to address situations in which these policy considerations arise. This shows that the CRTC's specialized expertise is not limited to the setting of rates or other "routine" matters. Ms. Goldy submits that this application raises issues of electoral policy, democratic rights, the freedom of expression of candidates and the freedom of conscience of voters. Even so, this does not lead me to conclude that the essential character of the dispute falls outside the area of the CRTC's exclusive jurisdiction. These are matters that the CRTC is well placed to address as part of its regulatory functions.

[80] For these reasons, I conclude that the essential character of the dispute raised by Ms. Goldy's application is within the area of the CRTC's exclusive jurisdiction over the interpretation and enforcement of its regulations under the *Act*.

(c) If the essential character of the dispute is within an area of the CRTC's exclusive jurisdiction, is the remedy required one which the CRTC has the authority to grant?

[81] The remedies that Ms. Goldy seeks are a declaration requiring Bell to allocate time for the broadcasting of her partisan political advertisements relating to her candidacy in the 2018 Toronto municipal election and a mandatory order requiring Bell to do so. These are remedies that the CRTC has the authority to grant.

[82] Ms. Goldy concedes that the CRTC can make a mandatory order, which has much of the same character and effect as a mandatory injunction through the combined operation of s. 12(2) and 13(1) of the *Act*.

(d) If the dispute falls within an area of concurrent or overlapping jurisdiction, should the Court exercise its discretion to hear the matter notwithstanding the CRTC's jurisdiction?

[83] I have concluded that the CRTC and this Court have concurrent jurisdiction over Ms. Goldy's alternative claim for relief under s. 24(1) of the *Charter*. I have concluded that the CRTC has exclusive jurisdiction in the area of Ms. Goldy's primary claim that involves the interpretation and enforcement of its regulations. The CRTC must act consistently with the *Charter* in discharging its statutory functions under the *Act*. The *Charter* issues are not unrelated to the other issues raised on this application.

[84] I decline to exercise my discretion to carve out the *Charter* issues and have them heard separately by the Superior Court of Justice. The entire application should be heard by the same tribunal, the CRTC.

Access to Justice and Urgency

[85] Ms. Goldy places considerable reliance on her submission that a finding that the Superior Court of Justice does not have jurisdiction over the claims made in this application would effectively deprive her of access to justice in an important case that raises fundamental questions concerning freedom of expression about political issues that lie at the very core of what we wish to protect in a free and democratic society.

[86] I do not question that the application raises important issues for Ms. Goldy's electoral campaign as a candidate for Mayor of Canada's largest city, and for candidates, broadcasters and others in future elections, involving the ability of candidates to meaningfully participate in the electoral process and the ability of all voters to be reasonably informed of all possible choices before them. The importance of the issues does not, however, determine the jurisdictional issue that is before me.

[87] Ms. Goldie submits that in the circumstances of this case, she acted reasonably and promptly, and that the CRTC was not able to hear her application because it does not have an emergency procedure for broadcasting matters provided for by statute or regulation and that this is by design, not oversight. She submits that, as a result, she would not have been able to obtain access to justice through an application for relief to the CRTC.

[88] Ms. Goldy provided evidence of the relevant time line for the commencement of this application. I do not question that Ms. Goldy acted promptly upon being notified that CP24 would not run her advertisements. Despite diligent efforts, she was not able to consult with counsel until October 3 and she was not able to retain her counsel until October 5. This application was commenced on the next business day, October 9. This preliminary hearing on the issue of jurisdiction was held yesterday afternoon on October 15, 2018, six days later.

[89] Ms. Goldy provided evidence that on October 11, 2018 her counsel called the CRTC to inquire with respect to the procedures at the CRTC for making a complaint. Counsel first spoke to the agent at the CRTC helpdesk and later with another individual at the Office of the Secretary General of the CRTC. Ms. Goldy's counsel was contacted by the general counsel for the CRTC in regards to her inquiries. The general counsel advised that the CRTC rule for making a complaint on an emergency basis in respect of telecommunications matters did not apply to broadcasting issues, and Ms. Goldy's counsel was advised that an application in writing was required. Ms. Goldy's counsel inquired as to whether if she completed the filing that day, the matter could be heard that week, and the general counsel for the CRTC advised that she did not have access to that information. The CRTC's general counsel advised that, notwithstanding the circumstances of Ms. Goldy and the impending election date, proceeding with the complaint before the CRTC to achieve a remedy prior to the election was "extremely, extremely ambitious".

[90] Undoubtedly, given that the election will be held on Monday, October 22, 2018, for Ms. Goldy and Bell to obtain a fair and just adjudication of the issues raised in the application, whether before the CRTC or the Superior Court of Justice, would be extremely challenging.

[91] At the hearing, Bell provided copies of three CRTC decisions that had been issued within very short times, 9 days, 8 days, and 7 days, following the filing of a written application. The CRTC has broad authority under s. 5(2) of the CRTC *Rules of Practice and Procedure* to provide for "any matter of practice and procedure not provided for in these rules". On the evidence before me, I am not able to find that because of the absence of a specific emergency procedure for broadcasting matters in the CRTC *Rules of Practice and Procedure*, the CRTC is unable to accommodate urgent applications in relation to broadcasting issues.

[92] I am also unable to find that successfully completing an adjudication of these issues could not have been done through an application to the CRTC, had one been made on October 5 or even on Tuesday of the following week. Indeed, when asked on October 11, the CRTC's general counsel did not say that the CRTC would be unable to hear and decide an application in time for Ms. Goldy's ads to run before the election; only that, as was evident, to do so would be very, very ambitious. Having been so informed, and with a hearing on a threshold jurisdictional issue scheduled for October 15, Ms. Goldy took no steps to make an application to the CRTC.

[93] In these circumstances, I do not agree that this application should be treated in the same way as, for example, emergency applications involving custody of children where courts have invoked their inherent *parens patriae* jurisdiction or applications for writs of *habeas corpus* in immigration matters. The issues raised by this application, which would have been raised on an application to the CRTC, affect Ms. Goldy and Bell most directly, but they also have significant public importance. For the same reasons as were given by Sharpe J. in *Mahar*, these issues should be heard and decided by the tribunal with exclusive jurisdiction over this area, the CRTC.

[94] I do not hold that the Superior Court of Justice would not have residual jurisdiction to grant an injunction in rare circumstances such as those that involve a truly dire emergency, even where a statutory tribunal has exclusive jurisdiction over the subject matter of the injunction. I decline to exercise such jurisdiction in the circumstances of this case.

[95] Bell submits that there is no prejudice to Ms. Goldy, because there are numerous other television stations in Toronto on which she can place her advertisements, and that there are other means of publicizing her candidacy and getting her message out through, for example, online communications or radio ads. Ms. Goldy responds that she has a statutory right to advertise with the licensee of her choice, and that she had valid reasons for choosing CP 24 to run her ads.

[96] I accept that Ms. Goldy may have valid reasons for preferring CP24 as the media outlet for her ads, but I consider the absence of evidence of her attempts to place ads with other less preferable television stations or other media outlets to be a factor that affects the my discretion concerning the exercise of residual jurisdiction in rare and exceptional circumstances. I also consider as a factor in the exercise of my discretion the evidence that Ms. Goldy made no application to the CRTC upon or after counsel having being retained. I also consider that Ms. Goldy is polling at approximately 6% according to the submissions of her counsel and that the outcome of this application will not have any realistic impact on the outcome of the election.

Disposition

[97] For the foregoing reasons, this application is dismissed.

[98] Counsel for Ms. Goldy made written submissions as to costs in his memorandum of oral argument. If Bell, after reviewing these submissions, seeks costs, it may make written submissions within 10 days. Ms. Goldy may make written responding submissions within 10 days thereafter. If so advised, Bell may make brief reply submissions within 5 days thereafter.

Cavanagh J.

Released: October 16, 2018

CITATION: Bazos v. Bell Media Inc., 2018 ONSC 6146
COURT FILE NO.: CV-18-00606558-0000
DATE: 20181016

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

FAITH BAZOS (aka FAITH GOLDY)

Applicant

– and –

BELL MEDIA INC.

Respondent

REASONS FOR JUDGMENT

Cavanagh J.

Released: October 16, 2018

TAB 2

Court File No. CVC-18-00606558-0000

ONTARIO
SUPERIOR COURT OFJUSTICE

In the Matter of Section 8 of the Radio Regulations, 1986 and Section 8 of the Television Broadcasting Regulations, 1987.

BETWEEN:

FAITH BAZOS (aka FAITH GOLDY)

Applicant

- and -

BELL MEDIA INC.

Respondent

(RESPONDING) COSTS SUBMISSIONS OF THE APPLICANT, FAITH BAZOS (aka FAITH GOLDY)

Date: November 2, 2018

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Court File No. CVC-18-00606558-0000

ONTARIO
SUPERIOR COURT OFJUSTICE

In the Matter of Section 8 of the Radio Regulations, 1986 and Section 8 of the Television Broadcasting Regulations, 1987.

BETWEEN:

FAITH BAZOS (aka FAITH GOLDY)

Applicant

- and -

BELL MEDIA INC.

Respondent

(RESPONDING) COSTS SUBMISSIONS OF THE APPLICANT, FAITH BAZOS (aka FAITH GOLDY)

Public Interest

1. The Respondent, Bell Media Inc., takes the view that this case does not raise a matter of public interest by narrowly defining its subject matter. They succeeded in persuading this Honourable Court to decline to exercise whatever jurisdiction it had on grounds of insufficient urgency. Put that narrowly, the argument that this is not a public interest case (our argument in the earlier written materials) becomes more plausible.

2. But in *Incredible Electronics Inc. v. Canada (Attorney General)* Perell J. had before him a case where, like this one, after much litigation, the case was never determined on its merits. The Court,

nonetheless, in determining that it was public interest litigation, focussed on issues put forward in the application actually brought and their importance to the public.

> "Even apart from its focus on an important freedom guaranteed by the *Charter*, freedom of expression, the application could have affected individual Canadians and Canadian society. It raised important public policy questions about the media, the dissemination of information, cultural sovereignty, and the regulation of the broadcasting and entertainment industries. I regard the application as raising matters that went far beyond the private interests of any of the parties."

These were issues that were:

> "...of significance not only to the parties, but to the broader community, and as a result the public interest is served by a proper resolution of those issues."

> *Incredible Electronics Inc. v. Canada (Attorney General)*, [2006] O.J. No. 2155, 147 C.R.R. (2d) 79 at paras. 3, 92, and at para. 91 citing *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371 at para. 38 per LeBel, J.
> [Brief of Authorities of the Respondent Re: Cost Submissions, Tab 5]

3. In *Incredible Electronics Inc. v. Canada (Attorney General)*, the Court, in part, denied public interest status because though the action involved an issue of public interest, nonetheless Incredible Electronics was litigating "in the main for its own substantial commercial purposes." There is no commercial purpose in this case. And like the logging company MacMillan Bloedel, though it was essentially a private corporation, Justice Perell noted that Bell ExpressVu occupied a "monopoly position" and it was therefore appropriate to treat Bell ExpressVu as a public authority. As noted in para. 108, being sued is a "relatively small price to pay for holding rights to and profiting from a valuable public resource." The same is true of the Respondent, Bell Media Inc.

> *Incredible Electronics Inc. v. Canada (Attorney General), supra,* at para. 102 and at para. 108 citing Professor Tollefson, "When the Public Interest Loses: The Liability of Public Interest Litigants for Adverse Costs Awards."
> [Brief of Authorities of the Respondent Re: Cost Submissions, Tab 5]

4. The Respondent suggests that the obtaining of publicity "for her cause" constituted a sufficient personal motive. However, it is not a commercial motive. It is inherent in every case where a public

interest issue is raised. Such litigants seek social change and public discussion of an issue. The associated argument that the choice of forum was based on the premise that she would get more publicity by bringing the case in Toronto rather than before the CRTC in Ottawa is pure speculation, for which there is no basis in the evidence and no foundation.

5. Even on the too narrow formulation of the issues put forward by the Respondent, this was a case with novel and important features. The Respondent argued that there was no exception to the rule that all such cases must go to the CRTC for decision and that, in any event, this case disclosed no urgency. The issue was certainly arguable, and the Court acted on the footing that the emergency jurisdiction may exist, but declined to exercise it. Even that issue is a point of general public interest and did not involve the application of settled law. But as we have argued, the formulation of the issues in this case should not be determined by the narrowest possible description of the issues nor by the fact that the Court determined the case in a narrower way than the Applicant had sought. It is impossible to suggest that there is no public interest in challenging a denial to allow a particular candidate to purchase a political advertisement during an election period. The ability to speak is crucial to democracy.

Delay and Access to the CRTC

6. In this case, the circumstance that made it difficult to bring the case before the CRTC in Ottawa was largely the delay created by the Respondent. There was evidence before the Court that the CRTC itself thought it would be very, very difficult to have the matter heard in time.

7. It was on August 22, 2018 that the Applicant asked to purchase advertising time from the Respondent. Emails were exchanged back and forth and no suggestion of any repudiation of the signed contract with the Respondent emerged. It was not until September 26, 2018 that the Applicant was

advised for the first time that the Respondent would not run her advertisement. This delay is completely unexplained! That delay -- solely caused by the Respondent, Bell Media Inc. -- is why she felt obliged to invoke the Superior Court jurisdiction.

September 26	Applicant is advised CP24 will not run her ads
	The Applicant contacts her Campaign Manager to find her a lawyer
September 27 & 28	The Applicant's Campaign Manager contacts potential lawyers
September 29 (weekend)	The Applicant speaks with counsel who says he would refer her to a colleague
October 2	Referring counsel contacts the firm of Ruby, Shiller, Enenajor, DiGiuseppe, Barristers [Six lawyers rejected her case before our firm was called. – Affidavit of Faith Bazos (aka Faith Goldy) at para.5]
October 3	The Applicant meets with counsel Clayton Ruby and Stephanie DiGiuseppe
October 5	The Applicant retains the firm (needed one day to source retainer amount)
October 5-8	Thanksgiving weekend
October 8 (holiday)	The Applicant's counsel provides a courtesy copy to senior counsel at Bell Canada
October 9	The Application is served and filed. Counsel attends Practice Court to schedule an urgent motion.

8. The Respondent's conduct made it clear that the principal delay, that made it so difficult to get before the CRTC in time, was their failure to give the Applicant any information at any early stage. Indeed, they did not give her an opportunity to be heard or argue that they should accept her ad. Moreover, until the litigation was actually brought, they disclosed no information whatsoever about why they were not taking the ad. No complaint was made about the content of the advertisement itself; it was solely this person who was denied access.

9. Quite simply, this application was made necessary solely by the Respondent delaying for more than a month and refusing to explain why they had rejected her advertisement until this application was brought.

Fairness

10. Fees must be fair and reasonable. The fees reflect one half day of argument (by three lawyers) on a simple focussed issue. The number of lawyers, the number of hours claimed in preparation, the rates and the overall amount are not reasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of November, 2018.

CLAYTON C. RUBY (LSUC# 11682R)
STEPHANIE DIGIUSEPPE (LSUC# 60065J)
Ruby, Shiller, Enenajor, DiGiuseppe
Barristers
92 Isabella St.
Toronto, ON
M4Y 1N4
T: 416.964.9664
F: 416.964.8305

Counsel for the Applicant, Faith Bazos (aka Faith Goldy)

TO: **McCARTHY TETRAULT LLP**
Suite 5300
Toronto Dominion Bank Tower
Toronto, ON
M5K 1E6

Steven G. Mason
Richard J. Lizius
Charlotte-Anne Malischewski

Counsel for the Respondent

Court File No.: CVC-18-00606558-0000

FAITH BAZOS (aka FAITH GOLDY) *and* **BELL MEDIA INC.**

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO

(RESPONDING) COSTS SUBMISSIONS OF THE APPLICANT, FAITH BAZOS (aka FAITH GOLDY)

Ruby Shiller Enenajor DiGiuseppe
Barristers
92 Isabella St.
Toronto, ON M4Y 1N4

Clayton C. Ruby and Stephanie DiGiuseppe

T: 416.964.9664
F: 416.964.8305

Counsel for the Applicant

TAB 3

CITATION: Bazos v. Bell Media Inc., 2018 ONSC 7462
COURT FILE NO.: CV-18-00606558-0000
DATE: 20181212

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: FAITH BAZOS (aka FAITH GOLDY), Applicant

AND:

BELL MEDIA INC., Respondent

BEFORE: Cavanagh J.

COUNSEL: *Clayton Ruby* and *Stephanie DiGiuseppe*, for the Applicant

Steven G. Mason, Richard Lizius and *Charlotte-Anne Malischewski* for the Respondent

HEARD: By Written Submissions

COSTS ENDORSEMENT

[1] The Applicant was a candidate for Mayor of the City of Toronto in the municipal election that took place on October 22, 2018. The Respondent owns and operates local television stations across Canada including Cable Pulse 24 ("CP24").

[2] CP24, after initially agreeing to run political advertisements in support of the Applicant's candidacy, had notified the Applicant on September 26, 2018 that it would not be able to run the advertisements that were planned and that it would refund the money that the Applicant had paid for these advertisements.

[3] The Applicant commenced this application on October 9, 2018 seeking a declaration that the Respondent is required to allocate time for the broadcasting of her partisan political advertisements relating to her candidacy in the 2018 the Toronto municipal election and a mandatory order requiring it to do so. In the alternative, the Applicant sought the same declaratory relief and mandatory order pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*.

[4] The Respondent objected to the jurisdiction of this court to adjudicate on the Applicant's application. On October 18, 2018 I heard submissions on preliminary issues of whether the court has jurisdiction to grant the relief sought and, if so, whether it should exercise its jurisdiction.

[5] I released my decision on October 19, 2018 that the CRTC has exclusive jurisdiction to grant the relief sought on this application. The application was dismissed.

[6] The Respondent submits that, as the successful party, it is presumptively entitled to costs of the hearing on the jurisdictional issue. The Respondent seeks costs on a partial indemnity scale in the amount of $43,117.90 comprised of $36,073 in fees and $2,084.44 in disbursements, plus taxes. The Respondent submits that the amount claimed is reasonable in the circumstances.

[7] The Applicant submits that she is a public interest litigant and that she should be subject to the discretionary rule that is sometimes applied in public interest litigation that no costs, or reduced costs, are ordered. The Applicant submits that costs should not be awarded against her. Alternatively, the Applicant submits that the amount claimed exceeds the amount that would be fair and reasonable.

[8] The Applicant relies upon the decision of Sharpe J. (as he then was) in *Mahar v. Rogers Cablesystems Ltd.*, 1995 CanLII 7129 (ONSC) in his addendum with respect to costs. Sharpe J. considered that it was fair to characterize the proceeding as a public interest suit and he noted that "[w]hile the ordinary cost rules apply in public interest litigation, those rules do include a discretion to relieve the loser of the burden of paying the winner's costs and that discretion has on occasion been exercised in favour of public interest litigants". Sharpe J. regarded the issue raised as novel and certainly a matter of public interest. He was satisfied that the application was brought in good faith and for the genuine purpose of having a point of law of general public interest resolved. Sharpe J. concluded that it was appropriate to exercise his discretion with respect to costs in favour of the applicant and to make no order as to costs.

[9] The Applicant also relies upon the decision of Perell J. in *Incredible Electronics Inc. v. Canada (Attorney General)*, [2006] O. J. No. 2155. The Applicant submits that in that case, Perell J. focused on issues put forward in the application actually brought and their importance to the public and, whereas public interest status was not afforded to Incredible Electronics because it was litigating in the main for its own substantial commercial purposes, there is no commercial purpose in this case.

[10] The Respondent points out that in *Incredible Electronics*, the applicants had been proceeding with their application when Incredible Electronics advised that it intended to abandon the application and the applications of the other unrepresented applicants were dismissed. The issue of costs, therefore, was concerned with the merits of the application. The Respondent submits that in respect of my decision, the parties were before the Court on the question of jurisdiction alone, and no cost are being sought with respect to work done on the merits.

[11] In *Singh v. Progressive Conservative Party of Ontario*, 2017 ONSC 5165, the applicant commenced an application seeking judicial review of the decision of a political party not to nominate him as a candidate in his provincial riding. An issue arose with respect to whether certain evidence was subject to settlement privilege and motions dealing with this issue were decided in favour of the respondents. The applicant argued, citing *Incredible Electronics* as authority, that he qualified as a "partisan in a matter of public importance" because his allegations raised issues concerning public confidence in the democratic process and that no costs should be awarded in favour of the respondents or, alternatively, that the costs claimed should be substantially reduced. I was the judge who heard the motions and I addressed this submission and held at para. 7:

> In relation to the issues on the motions that were before me, I do not agree that Singh qualifies as a "partisan in a matter of public importance". On these motions, I was required to decide whether the communications at the meeting in question are subject to settlement privilege. Although the issues on the underlying application may involve matters of public importance that would qualify for a costs reduction (I make no determination on this question), the issues on the motions that were before me did not involve matters of public importance such that Singh qualifies for a costs reduction for this reason.

[12] The applicant in *Singh* sought leave to appeal the costs order. The majority of the Divisional Court held that a "public interest discount" was not appropriate and that the issues on the motions were separate from the application: *Singh v. PCPO*, 2018 ONSC 203 (Div. Ct.) at paras. 67 and 75.

[13] The jurisdictional issue that was before me was separate from the merits of the Applicant's application. In the reasons for my decision on the jurisdictional issue I held at para. 72 that the decision of Sharpe J. in *Mahar* applied directly to this case and concluded that the area with which the dispute between the Applicant and the Respondent is concerned is within the exclusive jurisdiction of the CRTC.

[14] The Applicant submits that she felt obliged to invoke the jurisdiction of the Superior Court because of the Respondent's delay in advising her that it would not run her advertisements. In my decision on the jurisdictional issue, I wrote at paragraph 92 that I was unable to find that successfully completing an adjudication of the issues raised by the Applicant could not have been done through an application to this CRTC after counsel for the Applicant was retained. On the record before me, I am unable to accept the Applicant's submission that it was necessary for her to invoke the jurisdiction of the Superior Court instead of proceeding with an application to the CRTC.

[15] Given the decision in *Mahar* and the cases that had followed it, the jurisdictional issue was not a novel one, and involved the application of settled jurisprudence to the circumstances of this case. In relation to the jurisdictional issue that was before me, the Applicant does not qualify as a public interest litigant.

[16] As the successful party on the jurisdictional issue, and absent exceptional circumstances, the Respondent is entitled to costs on a partial indemnity scale.

[17] The Respondent's Costs Outline shows the number of hours spent by lawyers and a law clerk for (i) preparation of responding application materials; (ii) preparation for the jurisdictional hearing; (iii) attendance at the hearing including preparation that day; and (iv) preparation of costs outline and supporting documents. The lawyers who did the work were senior counsel (a 1994 call), second counsel (a 2014 call), and third counsel (a 2016 call). Most of the time was spent by the two less senior members of the legal team. The partial indemnity hourly rates claimed are $350 for senior counsel, $225 for second and third counsel, and $80 for a law clerk.

[18] The Applicant submits that the fees claimed are not fair and reasonable, and that the fees claimed are more than are justified for a hearing that took place over one-half day of argument

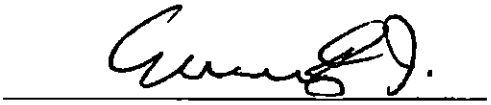
on a simple focussed issue. The Applicant submits that the number of lawyers, the number of hours claimed in preparation, the rates and the overall amount are not reasonable. The Applicant does not point to any specific aspect of the services rendered for this hearing that was unnecessary.

[19] The Applicant did not submit a costs outline in support of her submissions with respect to costs. As a result, I am unable to evaluate the reasonableness of the time expended by counsel for the Respondent in comparison with the time expended by counsel for the Applicant in addressing the jurisdictional issue. In *Risorto v. State Farm Mutual Automobile Insurance Co.*, 2003 ONSC 43566 Winkler J., as he then was, held at para. 10 that in the absence of dockets of counsel for the unsuccessful party in support of its submissions, "[t]he attack on the quantum of costs, insofar as the allegations of excess are concerned, in the present circumstances is no more than an attack in the air". I take the Applicant's failure to provide a costs outline into account when I consider her submission that the amount of time spent by counsel for the Respondent was excessive.

[20] The application was commenced on October 5, 2018 and on October 10, 2018 the preliminary hearing of the jurisdictional issue was scheduled for October 15, 2018. Additional materials directed to the jurisdictional issue were exchanged between October 11, 2018 and the day of the hearing. Given the nature of the application and the date that had been fixed for the municipal election, there is no question that the jurisdictional hearing involved considerable urgency and that counsel for the parties were called upon prepare materials and prepare for argument intensively over this period of time.

[21] I have considered the factors in Rule 57.01 of the Rules of Civil Procedure as well as the principle expressed in *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CarswellOnt 2521 (C.A.) at para. 26 that, in fixing costs, the court must consider the amount that would be fair and reasonable for the unsuccessful party to pay. I conclude that the amount of time spent by the lawyers for the Respondent was reasonable and that the distribution of the work among the members of the legal team was appropriate. The partial indemnity hourly rates claimed are reasonable for this case. I also conclude that the fees claimed of $36,073 based upon the number of hours shown in the Respondent's Costs Outline and the partial indemnity hourly rates claimed is an amount that would be fair and reasonable for the unsuccessful party to pay in the circumstances of this case.

[22] I fix costs to be paid by the Applicant to the Respondent in the amount claimed of $43,117.90 inclusive of fees, disbursements and applicable HST.



Cavanagh J.

Date: December 12, 2018

TAB 4

VIEZNER, JOSEF & FAITH.118

Faith Goldy [redacted]

Protected B when completed

Canada Revenue Agency / Agence du revenu du Canada

Income Tax and Benefit Return

2018

Step 1 – Identification and other information

ON 7

Identification

First name and initial: Faith

Last name: Goldy

Mailing address: Apt No. – Street No. Street name: [redacted]

PO Box | RR

City: Toronto

Prov./Terr.: ON | Postal code: [redacted]

Email address

By providing an email address, you are **registering** to receive email notifications from the CRA and **agree** to the **Terms of use** under Step 1 in the guide.

Enter an email address:

Information about your residence

Enter your province or territory of residence on **December 31, 2018**: Ontario

Enter the province or territory where you **currently** reside if it is not the same as your mailing address above:

If you were self-employed in 2018, enter the province or territory where your business had a permanent establishment: Ontario

If you **became** or **ceased** to be a **resident of Canada** for income tax purposes **in 2018**, enter the date of:

entry Month Day: | or **departure** Month Day:

Information about you

Enter your social insurance number (SIN): [redacted]

Enter your date of birth: Year [redacted] Month Day

Your language of correspondence: English [X] Votre langue de correspondance: Français [ ]

Is this return for a deceased person?

If this **return** is for a **deceased person**, enter the date of death: Year Month Day

Marital status

Tick the box that applies to your marital status on December 31, 2018:

1 [X] Married 2 [ ] Living common-law 3 [ ] Widowed

4 [ ] Divorced 5 [ ] Separated 6 [ ] Single

Information about your spouse or common-law partner (if you ticked box 1 or 2 above)

Enter their SIN: [redacted]

Enter their first name: Josef A

Enter their net income for 2018 to claim certain credits: 75,922 37

Enter the amount of universal child care benefit (UCCB) from line 117 of their return:

Enter the amount of UCCB repayment from line 213 of their return:

Tick this box if they were self-employed in 2018: 1 [ ]

Do not use this area

Elections Canada (For more information, see "Elections Canada" under Step 1, in the guide.)

A) Do you have Canadian citizenship? ..... Yes [X] 1 No [ ] 2

If yes, go to question B. If no, skip question B.

B) As a Canadian citizen, do you authorize the Canada Revenue Agency to give your name, address, date of birth, and citizenship to Elections Canada to update the National Register of Electors? ..... Yes [X] 1 No [ ] 2

Your authorization is valid until you file your next tax return. Your information will only be used for purposes permitted under the Canada Elections Act, which include sharing the information with provincial/territorial election agencies, members of Parliament, registered political parties, and candidates at election time.

Do not use this area	172						171				

Step 1 – Identification and other information (continued)

Please answer the following question:

Did you own or hold specified foreign property where the total cost amount of all such property, at any time in 2018, was more than CAN$100,000? ..... 266 Yes ☐ 1 No ☒ 2

If yes, get and complete Form T1135, Foreign Income Verification Statement. There are substantial penalties for not completing and filing Form T1135 by the due date. For more information, see Form T1135.

Step 2 – Total income

As a resident of Canada, you have to report your income from all sources both inside and outside Canada. The Income Tax and Benefit Guide may have additional information for certain lines.

Employment income (box 14 of all T4 slips)			101		
Commissions included on line 101 (box 42 of all T4 slips)	102				
Wage loss replacement contributions (See line 101 in the guide.)	103				
Other employment income			104		
Old age security pension (box 18 of the T4A(OAS) slip)			113		
CPP or QPP benefits (box 20 of the T4A(P) slip)			114		
Disability benefits included on line 114 (box 16 of the T4A(P) slip)	152				
Other pensions and superannuation (See line 115 in the guide and complete the Worksheet for Schedule 1 for line 314.)			115		
Elected split-pension amount (Get and complete Form T1032.)			116		
Universal child care benefit (UCCB) (See the RC62 slip.)			117		
UCCB amount designated to a dependant	185				
Employment insurance and other benefits (box 14 of the T4E slip)			119		
Taxable amount of dividends (eligible and other than eligible) from taxable Canadian corporations (Complete the Worksheet for the return.)			120		
Taxable amount of dividends other than eligible dividends, included on line 120, from taxable Canadian corporations	180				
Interest and other investment income (Complete the Worksheet for the return.)			121		
Net partnership income: limited or non-active partners only			122		
Registered disability savings plan income (box 131 of the T4A slip)			125		
Rental income	Gross	160	85,000 00	Net 126	17,226 56
Taxable capital gains (Complete Schedule 3.)				127	
Support payments received	Total	156		Taxable amount 128	
RRSP income (from all T4RSP slips)				129	
Other income	Specify:			130	
Self-employment income					
Business income	Gross	162	31,985 00	Net 135	-42 67
Professional income	Gross	164		Net 137	
Commission income	Gross	166		Net 139	
Farming income	Gross	168		Net 141	
Fishing income	Gross	170		Net 143	
Workers' compensation benefits (box 10 of the T5007 slip)		144			
Social assistance payments		145			
Net federal supplements (box 21 of the T4A(OAS) slip)		146			
Add lines 144, 145, and 146. (See line 250 on this return.)				▶ 147	
Add lines 101, 104 to 143, and 147.			This is your total income.	150	17,183 89

Attach only the documents (schedules, information slips, forms, or receipts) **requested** to support any claim or deduction. Keep all other supporting documents.

Step 3 – Net income

Enter your **total income** from line 150.				150	17,183 89
Pension adjustment (box 52 of all T4 slips and box 034 of all T4A slips)	206				
Registered pension plan deduction (box 20 of all T4 slips and box 032 of all T4A slips)			207		
RRSP and pooled registered pension plan (PRPP) deduction (See Schedule 7 and attach receipts.)			208		
Pooled registered pension plan (PRPP) **employer** contributions (amount from your PRPP contribution receipts)	205				
Deduction for elected split-pension amount (Get and complete Form T1032.)			210		
Annual union, professional, or like dues (receipts and box 44 of all T4 slips)			212		
Universal child care benefit repayment (box 12 of all RC62 slips)			213		
Child care expenses (Get and complete Form T778.)			214		
Disability supports deduction (Get and complete Form T929.)			215		
Business investment loss	Gross 228		Allowable deduction 217		
Moving expenses (Get and complete Form T1-M.)			219		
Support payments made	Total 230		Allowable deduction 220		
Carrying charges and interest expenses (Complete the Worksheet for the return.)			221		
Deduction for CPP or QPP contributions on self-employment and other earnings (Complete Schedule 8 or get and complete Form RC381, whichever applies.)			222		
Exploration and development expenses (Get and complete Form T1229.)			224		
Other employment expenses			229		
Clergy residence deduction (Get and complete Form T1223.)			231		
Other deductions	Specify:		232		
Add lines 207 to 224, 229, 231, and 232.			233	▶	
Line 150 minus line 233 (if negative, enter "0")		This is your **net income before adjustments.**		234	17,183 89
Social benefits repayment (If you reported income at line 119 and the amount at line 234 is greater than $64,625, see the repayment chart on the back of your T4E slip. If you reported income on lines 113 or 146, and the amount at line 234 is greater than $75,910, complete the chart for line 235 on the Worksheet for the return. Otherwise, enter "0".)				235	
Line 234 minus line 235 (if negative, enter "0")		This is your **net income.**		236	17,183 89

Step 4 – Taxable income

Canadian Forces personnel and police deduction (box 43 of all T4 slips)	244		
Security options deductions	249		
Other payments deduction (Claim the amount from line 147, unless it includes an amount at line 146. If so, see line 250 in the guide.)	250		
Limited partnership losses of other years	251		
Non-capital losses of other years	252		
Net capital losses of other years	253		
Capital gains deduction (Get and complete Form T657.)	254		
Northern residents deductions (Get and complete Form T2222.)	255		
Additional deductions Specify:	256		
Add lines 244 to 256.	257	▶	
Line 236 minus line 257 (if negative, enter "0")	This is your **taxable income.**	260	17,183 89

Step 5 – Federal tax Complete Schedule 1 to calculate your federal tax.

Step 6 – Provincial or territorial tax Complete Form 428 to calculate your provincial tax.

Faith Goldy [redacted]

Protected B when completed

Step 7 – Refund or balance owing

Net federal tax: enter the amount from line 61 of Schedule 1 (Attach Schedule 1, even if the result is "0".)	420	806	23
CPP contributions payable on self-employment and other earnings (Complete Schedule 8 or get and complete Form RC381, whichever applies.)	421		
Employment insurance premiums payable on self-employment and other eligible earnings (Complete Schedule 13.)	430		
Social benefits repayment (amount from line 235)	422		
Provincial or territorial tax (Attach Form 428, even if the result is "0".)	428	211	82
Add lines 420, 421, 430, 422, and 428. This is your **total payable.**	435	1,018	05 •

Total income tax deducted (amounts from all Canadian slips)	437		•
Refundable Quebec abatement (See line 440 in the guide.)	440		•
CPP overpayment (See line 308 in the guide.)	448		•
Employment insurance overpayment (See line 312 in the guide.)	450		•
Climate action incentive (Complete Schedule 14.)	449		•
Refundable medical expense supplement (Complete the Worksheet for the return.)	452		•
Working income tax benefit (WITB) (Complete Schedule 6.)	453		•
Refund of investment tax credit (Get and complete Form T2038(IND).)	454		•
Part XII.2 trust tax credit (box 38 of all T3 slips and box 209 of all T5013 slips)	456		•
Employee and partner GST/HST rebate (Get and complete Form GST370.)	457		•
Eligible educator school supply tax credit: Supplies expenses (maximum $1,000) 468 x 15%	469		•
Tax paid by instalments	476		•
Provincial or territorial credits (Complete Form 479, if it applies.)	479		•
Add lines 437 to 457, and 469 to 479. These are your **total credits.**	482		▶
Line 435 minus line 482 This is your **refund** or **balance owing.**		1,018	05

If the result is negative, you have a **refund.** If the result is positive, you have a **balance owing.**

Enter the amount below on whichever line applies.

Generally, we do not charge or refund a difference of $2 or less.

Refund 484 •

Balance owing 485 1,018 05 •

For more information on how to make your payment, see line 485 in the guide or go to **canada.ca/payments.** Your payment is due no later than April 30, 2019.

Direct deposit – Enrol or update

By providing my banking information **I authorize** the Receiver General to deposit in the bank account number shown below **any amounts payable** to me by the CRA, until otherwise notified by me. I understand that this authorization will replace all of my previous direct deposit authorizations.

Branch number 460 (5 digits) Institution number 461 (3 digits) Account number 462 (maximum 12 digits)

Ontario opportunities fund

You can help reduce Ontario's debt by completing this area to donate some or all of your 2018 refund to the Ontario opportunities fund. Please see the provincial pages for details.

Amount from line 484 above			1
Your donation to the Ontario opportunities fund	465		• 2
Net refund (line 1 minus line 2)	466		• 3

Prepared without audit from information supplied by the taxpayer

I certify that the information given on this return and in any documents attached is correct and complete and fully discloses all my income.

Sign here _____

It is a serious offence to make a false return.

Telephone number: (416) 464-6139

Date 2019-06-13

If this return was completed by a tax professional, tick the applicable box and provide the following information.

490 Was a fee charged? Yes [X] 1 No [ ] 2

489 EFILE number (if applicable): O1335

Name of tax professional: Sobel & Company, Professional Corporation

Telephone number: (416) 504-6360

Personal information (including the SIN as a personal identifier) is collected for the purposes of the administration or enforcement of the Income Tax Act and related programs and activities. This includes administering benefits, audit, compliance, and collection activities. It may be shared or verified with other federal, provincial, territorial or foreign government institutions to the extent authorized by law. Failure to provide this information may result in interest payable, penalties or other actions. Under the Privacy Act, individuals have the right to access their personal information, request correction, or file a complaint to the Privacy Commissioner of Canada regarding the handling of the individual's personal information. Refer to Personal Information Bank CRA PPU 005 on Info Source at **canada.ca/cra-info-source.**

Do not use this area 487 488 486 •

[redacted] JOSEF & FAITH.118

Faith Goldy [redacted]

T1-2018

Federal Tax

Protected B when completed

Schedule 1

This schedule represents **Step 5** in completing your return. Complete this schedule and **attach** it to your return.

Claim only the credits that apply to you.

The Income Tax and Benefit Guide may have additional information for certain lines.

Step A – Federal non-refundable tax credits

Basic personal amount	claim $11,809	300	11,809 00		1
Age amount (if you were born in 1953 or earlier) (Complete the Worksheet for Schedule 1.)	(maximum $7,333)	301			2
Spouse or common-law partner amount (Complete Schedule 5.)		303			3
Canada caregiver amount for spouse or common-law partner, or eligible dependant age 18 or older (Complete Schedule 5.)		304			4
Amount for an eligible dependant (Complete Schedule 5.)		305			5
Canada caregiver amount for other infirm dependants age 18 or older (Complete Schedule 5.)		307			6
Canada caregiver amount for infirm children under 18 years of age					
Enter the number of children for whom you are claiming this amount 352	x $2,182 =	367			7
CPP or QPP contributions: through employment from box 16 and box 17 of all T4 slips (Complete Schedule 8 or get and complete Form RC381, whichever applies.)		308		•	8
on self-employment and other earnings (Enter the amount from line 222 of your return.)		310		•	9
Employment insurance premiums: through employment from box 18 and box 55 of all T4 slips	(maximum $858.22)	312		•	10
on self-employment and other eligible earnings (Complete Schedule 13.)		317		•	11
Volunteer firefighters' amount		362			12
Search and rescue volunteers' amount		395			13
Canada employment amount (Enter $1,195 or the total of your employment income you reported on lines 101 and 104 of your return, **whichever is less.**)		363			14
Home accessibility expenses (Complete the Worksheet for Schedule 1.)	(maximum $10,000)	398			15
Home buyers' amount		369			16
Adoption expenses		313			17
Pension income amount (Complete the Worksheet for Schedule 1.)	(maximum $2,000)	314			18
Disability amount (for self) (Claim $8,235 or if you were under 18 years of age, complete the Worksheet for Schedule 1.)		316			19
Disability amount transferred from a dependant (Complete the Worksheet for Schedule 1.)		318			20
Interest paid on your student loans (See Guide P105.)		319			21
Your tuition, education, and textbook amounts (Complete Schedule 11.)		323			22
Tuition amount transferred from a child		324			23
Amounts transferred from your spouse or common-law partner (Complete Schedule 2.)		326			24
Medical expenses for self, spouse or common-law partner, and your dependent children born in 2001 or later 330			25		
Enter $2,302 or 3% of line 236 of your return, **whichever is less.**			26		
Line 25 minus line 26 (if negative, enter "0")			27		
Allowable amount of medical expenses for **other dependants** (Complete the Worksheet for Schedule 1.) 331			28		
Add lines 27 and 28.		▶	332		29
Add lines 1 to 24, and line 29.			335	11,809 00	30
Federal non-refundable tax credit rate				15 %	31
Multiply line 30 by line 31.			338	1,771 35	32
Donations and gifts (Complete Schedule 9.)			349		33
Add lines 32 and 33. Enter this amount on line 46 on the next page.	Total federal non-refundable tax credits		350	1,771 35	34

Continue on the next page.

Step B – Federal tax on taxable income

Enter your **taxable income** from line 260 of your return.					17,183 89	35
Complete the appropriate column depending on the amount on line 35.	Line 35 is **$46,605** or less	Line 35 is more than **$46,605** but not more than **$93,208**	Line 35 is more than **$93,208** but not more than **$144,489**	Line 35 is more than **$144,489** but not more than **$205,842**	Line 35 is more than **$205,842**	
Enter the amount from line 35.	17,183 89					36
Line 36 minus line 37 (cannot be negative)	0 00	46,605 00	93,208 00	144,489 00	205,842 00	37
	17,183 89					38
Multiply line 38 by line 39.	15 %	20.5 %	26 %	29 %	33 %	39
	2,577 58					40
	0 00	6,991 00	16,544 00	29,877 00	47,670 00	41
Add lines 40 and 41.	2,577 58					42

Step C – Net federal tax

Enter the amount from line 42.		2,577 58	43	
Federal tax on split income (Get and complete Form T1206.)	424		• 44	
Add lines 43 and 44.	404	2,577 58 ▶		2,577 58 45
Enter your total federal non-refundable tax credits from line 34 on the previous page.	350	1,771 35	46	
Federal dividend tax credit (See line 425 in the guide.)	425		• 47	
Minimum tax carryover (Get and complete Form T691.)	427		• 48	
Add lines 46, 47, and 48.		1,771 35 ▶		1,771 35 49
Line 45 minus line 49 (if negative, enter "0")		Basic federal tax	429	806 23 50
Federal foreign tax credit (Get and complete Form T2209.)			405	51
Line 50 minus line 51 (if negative, enter "0")		Federal tax	406	806 23 52
Total federal political contributions (attach receipts)	409		53	
Federal political contribution tax credit (Complete the Worksheet for Schedule 1.) (maximum $650)	410		• 54	
Investment tax credit (Get and complete Form T2038(IND).)	412		• 55	
Labour-sponsored funds tax credit (See lines 413 and 414 in the guide.)				
Net cost of shares of a provincially registered fund 413	Allowable credit	414	• 56	
Add lines 54, 55, and 56.		416 ▶		57
Line 52 minus line 57 (if negative, enter "0")			417	806 23 58
Working income tax benefit advance payments received (box 10 of the RC210 slip)			415	• 59
Special taxes (See line 418 in the guide.)			418	60
Add lines 58, 59, and 60. Enter this amount on line 420 of your return.		Net federal tax	420	806 23 61

Complete Form 428 to calculate provincial or territorial tax.

Ontario

Ontario Tax

Form ON428
2018

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This is **Step 6** in completing your return. Complete this form and **attach a copy** to your return.
Claim only the credits that apply to you.

Part A – Ontario non-refundable tax credits

	For internal use only	5605		
Basic personal amount	claim $10,354	5804	10,354 00	1
Age amount (if born in 1953 or earlier) (use Worksheet ON428)	(maximum $5,055)	5808		2
Spouse or common-law partner amount				
Base amount				
Minus: their net income from page 1 of your return				
Result: (if negative, enter "0")	(maximum $8,792) ▶	5812		3
Amount for an eligible dependant				
Base amount				
Minus: their net income from line 236 of their return				
Result: (if negative, enter "0")	(maximum $8,792) ▶	5816		4
Ontario caregiver amount (use Worksheet ON428)		5819		5
CPP or QPP contributions:				
Amount from line 308 of your federal Schedule 1		5824		• 6
Amount from line 310 of your federal Schedule 1		5828		• 7
Employment insurance premiums:				
Amount from line 312 of your federal Schedule 1		5832		• 8
Amount from line 317 of your federal Schedule 1		5829		• 9
Adoption expenses	(maximum $12,632)	5833		10
Pension income amount	(maximum $1,432)	5836		11
Disability amount (for self) (Claim **$8,365**, or if you were under 18 years of age, use Worksheet ON428.)		5844		12
Disability amount transferred from a dependant (use Worksheet ON428)		5848		13
Interest paid on your student loans (amount from line 319 of your federal Schedule 1)		5852		14
Your unused tuition and education amounts (**attach** Schedule ON(S11))		5856		15
Amounts transferred from your spouse or common-law partner (**attach** Schedule ON(S2))		5864		16

Medical expenses:				
(Read line 5868 in your income tax package.)	5868			17
Enter $2,343 or 3% of line 236 of your return, whichever is less.				18
Line 17 minus line 18 (if negative, enter "0")				19
Allowable amount of medical expenses for other dependants (use Worksheet ON428)	5872			20
Add lines 19 and 20.	5876		▶	21
Add lines 1 to 16, and line 21.		5880	10,354 00	22
Ontario non-refundable tax credit rate			5.05%	23
Multiply line 22 by line 23.		5884	522 88	24
Donations and gifts:				
Amount from line 16 of your federal Schedule 9	x 5.05% =			25
Amount from line 17 of your federal Schedule 9	x 11.16% =			26
Add lines 25 and 26.	5896		▶	27
Add lines 24 and 27. Enter this amount on line 40.	Ontario non-refundable tax credits	6150	522 88	28

Continue on the next page.

Part B – Ontario tax on taxable income

Enter your **taxable income** from line 260 of your return.					17,183 89	29
Use the amount from line 29 to decide which column to complete.	Line 29 is **$42,960** or less	Line 29 is more than **$42,960** but not more than **$85,923**	Line 29 is more than **$85,923** but not more than **$150,000**	Line 29 is more than **$150,000** but not more than **$220,000**	Line 29 is more than **$220,000**	
Amount from line 29	17,183 89					30
Line 30 minus line 31	0 00	42,960 00	85,923 00	150,000 00	220,000 00	31
(cannot be negative)	17,183 89					32
	5.05 %	9.15 %	11.16 %	12.16 %	13.16 %	33
Multiply line 32 by line 33.	867 79					34
Add lines 34 and 35.	0 00	2,169 00	6,101 00	13,252 00	21,764 00	35
Ontario tax on taxable income	867 79					36

Part C – Ontario tax

Enter your Ontario tax on taxable income from line 36.			867 79	37
Enter your Ontario tax on split income from Form T1206.	6151			• 38
Add lines 37 and 38.			867 79	39
Enter your Ontario non-refundable tax credits from line 28.			522 88	40
Line 39 minus line 40 (if negative, enter "0")			344 91	41

Ontario minimum tax carryover:

Amount from line 41	344 91		42
Enter your Ontario dividend tax credit from line 6152 of Worksheet ON428.			43
Line 42 minus line 43 (if negative, enter "0").	344 91		44
Amount from line 427 of your federal Schedule 1 x 33.67% =			45
Amount from line 44 or 45, whichever is less.	6154		• 46
Line 41 minus line 46 (if negative, enter "0")		344 91	47

Ontario surtax

Amount from line 47	344 91		48
Amount from line 38			49
Line 48 minus line 49 (if negative, enter "0")	344 91		50

Complete lines 51 to 53 only if the amount on line 50 is **more than $4,638.**
Otherwise, enter "0" on line 53 and continue completing the form.

(Line 50 344 91 minus $4,638) × 20% (if negative, enter "0") =			51
(Line 50 344 91 minus $5,936) × 36% (if negative, enter "0") =			52
Add lines 51 and 52.		▶	53
Add lines 47 and 53.		344 91	54

Ontario dividend tax credit:

Enter your Ontario dividend tax credit from line 6152 of Worksheet ON428.	6152		• 55
Line 54 minus line 55 (if negative, enter "0")		344 91	56

Ontario additional tax for minimum tax purposes:

If you entered an amount other than "0" on line 95 of Form T691, enter your Ontario additional tax for minimum tax purposes from line 57 of Worksheet ON428.			57
Add lines 56 and 57.		344 91	58

Continue on the next page.

Enter the amount from line 58 on the previous page.		344 91	59

Part D – Ontario tax reduction

Enter "0" on line 66 if **any** of the following applies to you:
- You were not a resident of Canada at the beginning of the year;
- You were not a resident of Ontario on December 31, 2018;
- There is an amount on line 57;
- The amount on line 59 is "0";
- Your return is filed for you by a trustee in bankruptcy;
- You are not claiming an Ontario tax reduction.

Otherwise, complete lines 60 to 66 to calculate your Ontario tax reduction.

Basic reduction		239 00	60	
If you had a spouse or common-law partner on December 31, 2018, **only** the individual with the **higher net income** can claim the amounts on lines 61 and 62.				
Reduction for dependent children born in 2000 or later Number of dependent children 6269 × $442 =			61	
Reduction for dependants with a mental or physical impairment Number of dependants 6097 × $442 =			62	
Add lines 60, 61, and 62.		239 00	63	
Amount from line 63	239 00 x 2 =	478 00	64	
Amount from line 59		344 91	65	
Line 64 minus line 65 (if negative, enter "0")	**Ontario tax reduction**	133 09 ▶		133 09 66
Line 59 minus line 66 (if negative, enter "0")				211 82 67

Part E – Ontario foreign tax credit

Enter the Ontario foreign tax credit from Form T2036.			68
Line 67 minus line 68 (if negative, enter "0")		211 82	69

Part F – Community food program donation tax credit for farmers

Enter the amount of qualifying donations that have also been claimed as charitable donations.	6098	× 25% =		70
Line 69 minus line 70 (if negative, enter "0")			211 82	71

Part G – Ontario health premium

Use the chart on the next page to calculate the amount of your Ontario health premium.		**Ontario health premium** ▶	0 00	72
Add lines 71 and 72. Enter the result on **line 428** of your return.		**Ontario tax**	211 82	73

Continue on the next page.

Ontario Health Premium

Enter the amount from line 29. 17,183|89

Go to the line on the chart below that corresponds to your taxable income from line 260 of your return.

If there is an Ontario health premium amount on that line, enter that amount on line 72.
If not, enter your taxable income in the first box on the line that corresponds to your taxable income and complete the calculation.

Enter the result on line 72.

Taxable income										Ontario health premium
not more than **$20,000**	▶		▶		▶					$ 0
more than **$20,000**, but not more than **$25,000**		− $	20,000 =		x	6 % =				
more than **$25,000**, but not more than **$36,000**	▶		▶		▶					$ 300
more than **$36,000**, but not more than **$38,500**		− $	36,000 =		x	6 % =		+ $	300 =	
more than **$38,500**, but not more than **$48,000**	▶		▶		▶					$ 450
more than **$48,000**, but not more than **$48,600**		− $	48,000 =		x	25 % =		+ $	450 =	
more than **$48,600**, but not more than **$72,000**	▶		▶		▶					$ 600
more than **$72,000**, but not more than **$72,600**		− $	72,000 =		x	25 % =		+ $	600 =	
more than **$72,600**, but not more than **$200,000**	▶		▶		▶					$ 750
more than **$200,000**, but not more than **$200,600**		− $	200,000 =		x	25 % =		+ $	750 =	
more than **$200,600**	▶		▶		▶					$ 900

See the privacy notice on your return.

[redacted]JOSEF & FAITH.118

Faith Goldy [redacted]

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Statement of Real Estate Rentals

- Use this form if you own and rent real estate or other property. It relates mainly to renting real estate but also covers some other types of rental property such as farmland. This form will help you determine your gross rental income, the expenses you can deduct, and your net rental income or loss for the year.
- To determine whether your rental income is from property or a business, consider the number and types of services you provide for your tenants:
  - If you rent space and only provide basic services such as heating, lighting, parking, laundry facilities, you are earning an income from renting property.
  - If you provide additional services such as cleaning, security, and meals, you may be conducting a business.
- For more information about how to determine if your rental income comes from property or a business, see Interpretation Bulletin IT-434R, Rental of Real Property by Individual, and its Special Release.
- If you are a co-owner of a property, you have to determine if a partnership exists before filling in the Identification part below. To determine if you are in a partnership, see Income Tax Folio S4-F16-C1, What is a Partnership?
- For information on how to fill out this form, see Guide T4036, Rental Income.

Part 1 – Identification

Your name	Your Social Insurance Number (SIN)
Faith Goldy	[redacted]

Your Address: [redacted]

City	Prov./Terr	Postal code
Toronto	ON	M5P 2L3

Fiscal period from	Date (YYYYMMDD)	to	Date (YYYYMMDD)	Was this the final year of your rental operation?	Yes ☐	No ☒
	2018-01-01		2018-12-31			

Your percentage of the partnership	Industry code	Tax shelter identification number (8 characters)	Partnership business number
25.00 %	531111		

Name of person or firm preparing this form	Business number/Account number
Sobel & Company, Professional Corporation	

Address of person or firm preparing this form: 55 Standish Court, Ste 610/Box 4

City	Prov./Terr	Postal code
Mississauga	ON	L5R 4B2

Part 2 – Details of other co-owners and partners

Co-owner or partner's name and address: K[redacted] G[redacted]	Share of net income (loss): 42,500 00	Percentage of ownership: 50.00 %
Co-owner or partner's name and address: A[redacted] G[redacted]	Share of net income (loss): 21,250 00	Percentage of ownership: 25.00 %
Co-owner or partner's name and address:	Share of net income (loss):	Percentage of ownership: %
Co-owner or partner's name and address:	Share of net income (loss):	Percentage of ownership: %

Part 3 – Income

In most cases, you calculate your rental income using the **accrual method**. If you have no amounts receivable and no expenses outstanding at the end of the year, you can use the **cash method**.

List the addresses of your rental properties	Number of units	Gross rents	
[redacted]	1	85,000 00	1
			2
			3
Enter the total of your gross rents in the year you receive them (amount 1 **plus** amount 2 **plus** amount 3)	8141	85,000 00	4
Other income (for example, premiums and leases, sharecropping)	8230		5
Total gross rental income – Enter this amount on your income tax and benefit return on line 160 (amount 4 **plus** amount 5)	8299	85,000 00	6

Part 4 – Expenses

		Total expenses	Personal portion
Advertising	8521		
Insurance	8690		
Interest and bank charges	8710		
Office expenses	8810		
Professional fees (includes legal and accounting fees)	8860		
Management and administration fees	8871		
Repairs and maintenance	8960		
Salaries, wages, and benefits (including employer's contributions)	9060		
Property taxes	9180		
Travel	9200		
Utilities	9220		
Motor vehicle expenses (not including capital cost allowance)	9281		
Other expenses	9270		

Total expenses (add the lines listed under "Total expenses") A

Total for personal portion (add the lines listed under "Personal portion") 9949

Deductible expenses (total expenses from amount A **minus** total personal portion on line 9949)			7
Net income (loss) before adjustments (total gross rental income from amount 6 **minus** deductible expenses from amount 7)	9369	85,000 00	8
Other expenses of the co-owners – calculate your share of net income from amount 8. Enter your result on amount 9		21,250 00	9
Minus:			
Co-owners – other deductible expenses you have as a co-owner which you did not deduct elsewhere	9945		10
Subtotal (amount 9 **minus** amount 10)		21,250 00	11
Plus:			
Recaptured capital cost allowance (co-owners – enter your share of the amount)	9947		12
Subtotal (amount 11 **plus** amount 12)		21,250 00	13
Minus:			
Terminal loss (co-owners – enter your share of the amount)	9948		14
Subtotal (amount 13 **minus** amount 14)		21,250 00	15
Total capital cost allowance claim for the year (amount B from Area A)	9936	4,023 44	16
Minus:			
Net income (loss) (amount 15 **minus** amount 16)		17,226 56	17
If you are a sole proprietor or a co-owner enter this amount on line 9946.			
Partnerships			
Partners – your share of amount 17, or the amount from your T5013 slip, *Statement of Partnership Income*			18
Plus:			
Partners – GST/HST rebate for partners received in the year	9974		19
Minus:			
Partners – other expenses of the partner	9943		20
Your net income (loss) – For sole proprietors or co-owners, enter this amount on your income tax and benefit return on line 126. For partnerships, enter the result of amount 18 **plus** amount 19 **minus** amount 20. Enter this amount on your income tax and benefit return on line 126	9946	17,226 56	21

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The capital cost allowance (CCA) you can claim depends on the type of rental property you own and the date you acquired it. Group the depreciable property you own into the appropriate classes. A specific rate of CCA generally applies to each class.

Area A – Calculation of capital cost allowance claim

	1 Class number	2 Undepreciated capital cost (UCC) at the start of the year	Amount to be subtracted	3 Cost of additions in the year	4 Cost of additions from column 3 which are AIIP	5 Proceeds of dispositions in the year	6 UCC after additions and dispositions (2 + 3 - 5)	7 Proceeds of dispositions available to reduce additions of AIIP (5 - 3 + 4)
1	1	100,585 92					100,585 92	
2								

	1 Class number	8 UCC adjustment for current-year additions of AIIP (4 - 7) multiplied by the relevant factor	9 Adjustment for current-year additions subject to the half year-rule 1/2 x (3 - 4 - 5)	10 Base amount for CCA (6+ 8 - 9)	11 CCA Rate (%)	12 CCA for the year (10 multiplied 11 or a lower amount)	13 UCC at the end of the year (6 - 12)
1	1			100,585 92	4.00	4,023 44	96,562 48
2							

Total CCA claim for the year[2] (total of column 12) 4,023 44 **B**

Area B – Equipment additions in the year

1 Class number	2 Property details	3 Total cost	4 Personal portion (if applicable)	5 Rental portion (col.3 minus col.4)

Total equipment additions in the year (total of column 5) 9925

List all building or leasehold interest additions you acquired or improved in the current tax year. Group the depreciable property you own into the appropriate classes.

Area C – Building additions in the year

1 Class number	2 Property details	3 Total cost	4 Personal portion (if applicable)	5 Rental portion (col.3 minus col.4)

Total of building additions in the year (total of column 5) 9927

Area D – Equipment dispositions in the year

1 Class number	2 Property details	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal portion (if applicable)	5 Rental portion (col.3 minus col.4)

Total equipment dispositions in the year (total of column 5) 9926

Area E – Building dispositions in the year

1 Class number	2 Property details	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal portion (if applicable)	5 Rental portion (col.3 minus col.4)

Total building dispositions in the year (total of column 5) 9928

Area F – Land additions and dispositions in the year

Total cost of all land additions in the year	9923
Total proceeds from all land dispositions in the year	9924

See the privacy notice on your return.

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Statement of Business or Professional Activities

- Use this form to calculate your self-employment business and professional income.
- For each business or profession, fill in a **separate** Form T2125.
- Fill in this form and send it with your income tax and benefit return.
- For more information on how to fill in this form, see Guide T4002, Self-employed Business, Professional, Commission, Farming, and Fishing Income.

Part 1 – Identification

Your name Faith Goldy	Your social insurance number (SIN) [redacted]
Business name Faith Goldy	Business number [redacted]
Business address [redacted]	
City Toronto	Prov./Terr. ON
	Postal code [redacted]
Fiscal period — Date (YYYYMMDD) From: 2018-04-01 to: 2018-12-31	Was 2018 your last year of business? Yes ☐ No ☒
Main product or service Reporter	Industry code (see the appendix in Guide T4002) 519190
Accounting method (commission only): ☐ Cash ☒ Accrual	Tax shelter identification number
Partnership business number	Your percentage of the partnership %
Name and address of person or firm preparing this form	Sobel & Company, Professional Corporation 55 Standish Court, Ste 610/Box 4 Mississauga ON L5R 4B2

Part 2 – Internet business activities

If your web pages or websites generate business or professional income, fill in this part of the form.

How many Internet web pages and websites does your business earn income from? Enter "0" if none . . . . . .

Provide up to five main web page or website addresses, also known as uniform resource locator (URL):

http://

http://

http://

http://

http://

Percentage of your gross income generated from the web pages and websites.
(If no income was generated from the Internet, enter "0".) . . . . . %

Part 3A – Business income
Fill in this part **only** if you have business income. If you have professional income, leave this part blank and fill in Part 3B.
If you have both business and professional income, you have to fill out a separate Form T2125 for each.

Part 3B – Professional income
Fill in this part **only** if you have professional income. If you have business income, leave this part blank and fill in Part 3A.
If you have both business and professional income, you have to fill out a separate Form T2125 for each.

Note: New rules allow you to include your work in progress (WIP) progressively if you elected to use billed basis accounting for the last tax year that started before March 22, 2017. Generally, for the first tax year that starts after March 21, 2017, you must include 50% of the lesser of the cost and the fair market value of WIP. For more information, see chapter 2 of guide T4002.

Part 3A – Business income

Gross sales, commissions, or fees (include GST/HST collected or collectible)	31,985 00	1
GST/HST, provincial sales tax, returns, allowances, discounts, and GST/HST adjustments (included in amount 1)		2
Subtotal: Amount 1 **minus** amount 2	31,985 00	3
If you are using the quick method for GST/HST – Government assistance calculated as follows: GST/HST collected or collectible on sales, commissions and fees eligible for the quick method		4
GST/HST remitted, calculated on (sales, commissions, and fees eligible for the quick method **plus** GST/HST collected or collectible) **multiplied** by the applicable quick method remittance rate		5
Subtotal: Amount 4 **minus** amount 5		6
Adjusted gross sales: Amount 3 **plus** amount 6 (enter on line 8000 of Part 3C)	31,985 00	7

Part 3B – Professional income

Gross professional fees including work-in-progress (WIP) and GST/HST collected or collectible		8
GST/HST, provincial sales tax, returns, allowances, discounts, and GST/HST adjustments (included in amount 8) and any WIP at the end of the year you elected to exclude		9
Subtotal: Amount 8 **minus** amount 9		10
If you are using the quick method for GST/HST – Government assistance calculated as follows: GST/HST collected or collectible on professional fees eligible for the quick method		11
GST/HST remitted, calculated on (professional fees eligible for the quick method **plus** GST/HST collected or collectible) **multiplied** by the applicable quick method remittance rate		12
Subtotal: Amount 11 **minus** amount 12		13
Work-in-progress (WIP), start of the year, per election to exclude WIP (see Guide T4002, Chapter 2)		14
Adjusted professional fees: Amount 10 **plus** amount 13 **plus** amount 14 (enter on line 8000 of Part 3C)		15

Part 3C– Gross business or professional income

Adjusted gross sales (amount 7 of Part 3A) or adjusted professional fees (amount 15 of Part 3B)	8000	31,985 00	
Reserves deducted last year	8290		
Other income	8230		
Subtotal: Line 8290 **plus** line 8230	▶		16
Gross business or professional income: Line 8000 **plus** amount 16	8299	31,985 00	

Report the gross business or professional income from line 8299 on the applicable line of your income tax and benefit return as indicated below:
- business income on line 162
- professional income on line 164
- commission income on line 166

For Parts 3D, 4, and 5, if GST/HST has been remitted or an input tax credit has been claimed, do not include GST/HST when you calculate the cost of goods sold, expenses, or net income (loss).

Part 3D – Cost of goods sold and gross profit

If you have business income, fill in this part. Enter only the business part of the costs.

Gross business income (line 8299 of Part 3C)		31,985 00	17
Opening inventory (include raw materials, goods in process, and finished goods)	8300		
Purchases during the year (net of returns, allowances, and discounts)	8320		
Direct wage costs	8340		
Subcontracts	8360		
Other costs	8450		
Subtotal: Add the amounts above			18
Minus: Closing inventory (include raw materials, goods in process, and finished goods)	8500		
Cost of goods sold: Amount 18 **minus** line 8500	8518	▶	19
Gross profit (or loss): Amount 17 **minus** amount 19	8519	31,985 00	

Part 4 – Net income (loss) before adjustments

Gross business or professional income (line 8299 of Part 3C) or **Gross profit** (line 8519 of Part 3D)				31,985 00 a
Expenses (enter only the business part)				
Advertising	8521	520 00		
Meals and entertainment	8523			
Bad debts	8590			
Insurance	8690			
Interest and bank charges	8710	1,354 00		
Business taxes, licences, and memberships	8760			
Office expenses	8810	800 00		
Office stationery and supplies	8811			
Professional fees (includes legal and accounting fees)	8860	22,124 00		
Management and administration fees	8871			
Rent	8910	550 00		
Repairs and maintenance	8960			
Salaries, wages, and benefits (including employer's contributions)	9060			
Property taxes	9180			
Travel expenses	9200			
Utilities	9220	3,967 67		
Fuel costs (except for motor vehicles)	9224			
Delivery, freight, and express	9275			
Motor vehicle expenses (not including CCA) (amount 15 of Chart A)	9281	480 00		
Capital cost allowance (CCA). Enter amount i of Area A **minus** any personal part and any CCA for business-use-of-home expenses	9936			
Other expenses (specify):	9270			
Security fees		1,907 00		
Hotel costs		325 00		
Total expenses: Total of the above amounts	9368	32,027 67	▶	32,027 67 b
Net income (loss) before adjustments: Amount a **minus** amount b			9369	-42 67

Part 5 – Your net income (loss)

Your share of line 9369 or the amount from your T5013 slip, Statement of Partnership Income		-42 67	c	
Plus: GST/HST rebate for partners that was received in the year	9974			
Total: Amount c **plus** line 9974		-42 67	▶	-42 67 d
Minus: Other amounts deductible from your share of the net partnership income (loss) (amount 6 of Part 6)			9943	
Net income (loss) after adjustments: Amount d **minus** line 9943				-42 67 e
Minus: Business-use-of-home expenses (amount 16 of Part 7)			9945	
Your net income (loss): Amount e **minus** line 9945			9946	-42 67

Report the net income amount from line 9946 on the applicable line of your income tax and benefit return as indicated below:

- business income on line 135
- professional income on line 137
- commission income on line 139

Part 6 – Other amounts deductible from your share of the net partnership income (loss)

Claim expenses you incurred that were not included in the partnership statement of income and expenses, and for which the partnership did not reimburse you. These claims must not be included in the claims already calculated for the partnership.

List details of expenses:	Expense amounts	
Business use of motor vehicle		1
Meals and entertainment		2
Private health services plan premiums		3
		4
		5
		6
		7
		8
		9
		10
		11
Total other amounts deductible from your share of the net partnership income (loss): Add amounts 1 to 11 (enter this on line 9943 of Part 5)		12

Part 7 – Calculation of business-use-of-home expenses

Heat		1
Electricity		2
Insurance		3
Maintenance		4
Mortgage interest		5
Property taxes		6
Other expenses (specify):		7
Subtotal: Add amounts 1 to 7		8
Minus: Personal-use part of the business-use-of-home expenses		9
Subtotal: Amount 8 **minus** amount 9		10
Plus: Capital cost allowance (business part only), which means amount i of Area A minus any portion of CCA that is for personal use or entered on line 9936 of Part 4		11
Amount carried forward from previous year		12
Subtotal: Add amounts 10 to 12		13
Minus: Net income (loss) after adjustments (amount e of Part 5) (if negative, enter "0")		14
Business-use-of-home expenses available to carry forward: Amount 13 **minus** amount 14 (if negative, enter "0")		15
Allowable claim: The lesser of amount 13 and 14 above (enter your share of this amount on line 9945 of Part 5)		16

Part 8 – Details of other partners

Do not fill in this chart if you must file a partnership information return.

Name of partner / Address	Prov./Terr.	Postal code	Share of net income or (loss)	Percentage of partnership
			$	%
			$	%
			$	%
			$	%

Part 9 – Details of equity

Total business liabilities	9931	
Drawings in 2018	9932	
Capital contributions in 2018	9933	

Area A – Calculation of capital cost allowance (CCA) claim

Part XI properties (acquired after 1971)

CCA other than classes 10.1 and 13

1 Class number	2 Undepreciated capital cost (UCC) at the start of the year	Amount to be subtracted	3 Cost of additions in the year	4 Cost of additions from column 3 which are AIIP	5 Proceeds of dispositions in the year	6 UCC after additions and dispositions (2 + 3 - 5)	7 Proceeds of dispositions available to reduce additions of AIIP (5 - 3 + 4)

1 Class number	8 UCC adjustment for current-year additions of AIIP (4 - 7) multiplied by the relevant factor	9 Adjustment for current-year additions subject to the half year-rule 1/2 x (3 - 4 - 5)	10 Base amount for CCA (6+ 8 - 9)	11 CCA Rate (%)	12 CCA for the year (10 multiplied 11 or a lower amount)	13 UCC at the end of the year (6 - 12)

Total CCA for classes other than 10.1 and 13. ▶

Total CCA claim for the year: Total of column 12 (enter the amount on line 9936 of Part 4, amount i **minus** any personal part and any CCA for business-use-of-home expenses*) ▶ i

* For information on CCA for "Calculation of business-use-of-home expenses," see "Special situations" in Guide T4002, Chapter 4. To help you calculate the capital cost allowance claim, see the calculation charts in Areas B to F.

Area B – Equipment additions in the year

1 Class number	2 Property description	3 Total cost	4 Personal part (if applicable)	5 Business part (column 3 minus column 4)

Total equipment additions in the year: Total of column 5 9925

Area C – Building additions in the year

1 Class number	2 Property description	3 Total cost	4 Personal part (if applicable)	5 Business part (column 3 minus column 4)

Total of building additions in the year: Total of column 5 9927

Area D – Equipment dispositions in the year

1 Class number	2 Property description	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal part (if applicable)	5 Business part (column 3 minus column 4)

Note: If you disposed of property in the year, see Chapter 3 of Guide T4002 for information about your proceeds of disposition.

Total equipment dispositions in the year: Total of column 5 9926

Area E – Building dispositions in the year

1 Class number	2 Property description	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal part (if applicable)	5 Business part (column 3 minus column 4)

Note: If you disposed of property in the year, see Chapter 3 of Guide T4002 for information about your proceeds of disposition.

Total building dispositions in the year: Total of column 5 9928

Area F – Land additions and dispositions in the year

Total cost of all land additions in the year	9923
Total proceeds from all land dispositions in the year	9924

Note: You cannot claim capital cost allowance on land. For more information, see Chapter 3 of Guide T4002.

See the privacy notice on your return

[redacted] JOSEF & FAITH.119
2020-05-28 16:47

Faith Goldy
[redacted]

Canada Revenue Agency | Agence du revenu du Canada

Protected B when completed

Income Tax and Benefit Return 2019

Before you start:
If you are filling out this return for a **deceased person**, make sure you enter **their information** in all the boxes in Step 1.

Step 1 – Identification and other information

ON 7

Identification

First name and initial: Faith

Last name: Goldy

Mailing address: Apt No. – Street No. Street name: [redacted]

PO Box | RR

City: Toronto

Prov./Terr.: ON | Postal code: [redacted]

Email address

By providing an email address, you are **registering** to receive email notifications from the CRA and **agree** to the **Terms of use** under Step 1 in the guide.
Enter an email address:

Information about your residence

Enter your province or territory of residence on **December 31, 2019**: Ontario

Enter the province or territory where you **currently** reside if it is not the same as your mailing address above:

If you were self-employed in 2019, enter the province or territory where your business had a permanent establishment: Ontario

If you **became** or **ceased** to be a **resident of Canada** for income tax purposes **in 2019**, enter the date of:
entry Month Day ____ or **departure** Month Day ____

Information about you

Enter your social insurance number (SIN): [redacted]

Enter your date of birth: Year Month Day 1989-06-08

Your language of correspondence / Votre langue de correspondance : English [X] Français [ ]

Is this return for a deceased person?

Ensure the **SIN** information above is for the deceased person.

If this **return** is for a **deceased person**, enter the date of death: Year Month Day

Marital status

Tick the box that applies to your marital status on December 31, 2019:

1 [X] Married 2 [ ] Living common-law 3 [ ] Widowed
4 [ ] Divorced 5 [ ] Separated 6 [ ] Single

Information about your spouse or common-law partner (if you ticked box 1 or 2 above)

Enter their SIN: [redacted]

Enter their first name: Josef A

Enter their net income for 2019 to claim certain credits: 81,519 21

Enter the amount of universal child care benefit (UCCB) from line 11700 of their return:

Enter the amount of UCCB repayment from line 21300 of their return:

Tick this box if they were self-employed in 2019: 1 [ ]

Do not use this area

Do not use this area	17200					17100				

Step 1 – Identification and other information (continued)

Please answer the following questions.

Elections Canada (For more information, see "Elections Canada" under Step 1, in the guide.)

A) Do you have Canadian citizenship? . . . . . Yes [X] 1 No [ ] 2

If yes, go to question B. If no, skip question B.

B) As a Canadian citizen, do you authorize the Canada Revenue Agency to give your name, address, date of birth, and citizenship to Elections Canada to update the National Register of Electors or, if you are aged 14 to 17, to update the Register of Future Electors? . . . . . Yes [X] 1 No [ ] 2

Your authorization is valid until you file your next tax return. Your information will only be used for purposes permitted under the Canada Elections Act, which include sharing lists of electors produced from the National Register of Electors with provincial and territorial electoral agencies, members of Parliament, registered and eligible political parties, and candidates at election time.

Your information in the Register of Future Electors will be included in the National Register of Electors once you turn 18. Information from the Register of Future Electors can be shared only with provincial and territorial electoral agencies that are allowed to collect future elector information. In addition, Elections Canada can use information in the Register of Future Electors to provide youth with educational information about the electoral process.

Indian Act – Exempt income

Tick this box if you have any income that is exempt under the Indian Act.
For more information on this type of income, go to **canada.ca/taxes-aboriginal-peoples**. 1 [ ]

If you tick the box, get and complete Form T90, Income Exempt under the Indian Act. Complete this form so that the CRA can calculate your Canada training credit limit for the 2020 tax year. The information you provide may also be used to calculate your Canada workers benefit for the 2019 tax year, if applicable.

Foreign property

Did you own or hold specified foreign property where the total cost amount of all such property, at any time in 2019, was more than CAN$100,000? . . . . . 26600 Yes [ ] 1 No [X] 2

If **yes**, get and complete Form T1135, Foreign Income Verification Statement. There are substantial penalties for not completing and filing Form T1135 by the due date. For more information, see Form T1135.

Attach only the documents (schedules, information slips, forms, or receipts) **requested** to support any claim or deduction. Keep all other supporting documents.

Step 2 – Total income

As a resident of Canada, you have to report your income from all sources both inside and outside Canada. The Income Tax and Benefit Guide may have additional information for certain lines.

Employment income (box 14 of all T4 slips)					10100	
Tax-exempt income for emergency services volunteers (See line 10100 in the guide.)	10105					
Commissions included on line 10100 (box 42 of all T4 slips)	10120					
Wage-loss replacement contributions (See line 10100 in the guide.)	10130					
Other employment income					10400	
Old age security pension (box 18 of the T4A(OAS) slip)					11300	
CPP or QPP benefits (box 20 of the T4A(P) slip)					11400	
Disability benefits included on line 11400 (box 16 of the T4A(P) slip)	11410					
Other pensions and superannuation (See line 11500 in the guide and complete line 31400 in the Worksheet for the return.)					11500	
Elected split-pension amount (Get and complete Form T1032.)					11600	
Universal child care benefit (UCCB) (See the RC62 slip.)					11700	
UCCB amount designated to a dependant	11701					
Employment insurance and other benefits (box 14 of the T4E slip)					11900	
Employment insurance maternity and parental benefits and provincial parental insurance plan benefits	11905					
Taxable amount of dividends (eligible **and** other than eligible) from taxable Canadian corporations (Complete the Worksheet for the return.)					12000	
Taxable amount of dividends other than eligible dividends, included on line 12000, from taxable Canadian corporations	12010					
Interest and other investment income (Complete the Worksheet for the return.)					12100	
Net partnership income: limited or non-active partners only					12200	
Registered disability savings plan income (box 131 of the T4A slip)					12500	
Rental income	Gross 12599	85,000 00		Net	12600	17,387 50
Taxable capital gains (Complete Schedule 3.)					12700	
Support payments received	Total 12799			Taxable amount	12800	
RRSP income (from all T4RSP slips)					12900	
Other income	Specify:				13000	
Taxable scholarship, fellowships, bursaries, and artists' project grants					13010	
Self-employment income						
Business income	Gross 13499	13,673 15		Net	13500	2,334 24
Professional income	Gross 13699			Net	13700	
Commission income	Gross 13899			Net	13900	
Farming income	Gross 14099			Net	14100	
Fishing income	Gross 14299			Net	14300	
Workers' compensation benefits (box 10 of the T5007 slip)		14400				
Social assistance payments		14500				
Net federal supplements (box 21 of the T4A(OAS) slip)		14600				
Add lines 14400, 14500, and 14600. (See line 25000 in Step 4.)				▶	14700	
Add lines 10100, 10400 to 11400, 11500 to 11700, 11900, 12000, 12100 to 12500, 12600, 12700, 12800, 12900 to 13010, 13500, 13700, 13900, 14100, 14300, and 14700.			This is your **total income.**		15000	19,721 74

Step 3 – Net income

Enter your **total income** from line 15000 from the previous page.				15000	19,721 74
Pension adjustment (box 52 of all T4 slips and box 034 of all T4A slips)	20600				
Registered pension plan deduction (box 20 of all T4 slips and box 032 of all T4A slips)		20700			
RRSP deduction (See Schedule 7 and **attach** receipts.)		20800			
Pooled registered pension plan (PRPP) **employer** contributions (amount from your PRPP contribution receipts)	20810				
Deduction for elected split-pension amount (Get and complete Form T1032.)		21000			
Annual union, professional, or like dues (receipts and box 44 of all T4 slips)		21200			
Universal child care benefit repayment (box 12 of all RC62 slips)		21300			
Child care expenses (Get and complete Form T778.)		21400			
Disability supports deduction (Get and complete Form T929.)		21500			
Business investment loss Gross 21699		Allowable deduction	21700		
Moving expenses (Get and complete Form T1-M.)			21900		
Support payments made Total 21999		Allowable deduction	22000		
Carrying charges and interest expenses (Complete the Worksheet for the return.)			22100		
Deduction for CPP or QPP contributions on self-employment and other earnings (Complete Schedule 8 or get and complete Form RC381, whichever applies.)			22200		
Deduction for CPP or QPP enhanced contributions on employment income (Complete Schedule 8 or get and complete Form RC381, whichever applies.)			22215		
Exploration and development expenses (Get and complete Form T1229.)			22400		
Other employment expenses			22900		
Clergy residence deduction (Get and complete Form T1223.)			23100		
Other deductions Specify:			23200		
Add lines 20700, 20800, 21000 to 21500, 21700, 21900, 22000, and 22100 to 23200.			23300	▶	
Line 15000 minus line 23300 (if negative, enter "0") This is your **net income before adjustments.**				23400	19,721 74
Social benefits repayment (If you reported income at line 11900 and the amount at line 23400 is greater than $66,375, see the repayment chart on the back of your T4E slip. If you reported income on lines 11300 or 14600, and the amount at line 23400 is greater than $77,580, complete the chart for line 23500 on the Worksheet for the return. Otherwise, enter "0".)				23500	
Line 23400 minus line 23500 (if negative, enter "0") This is your **net income.**				23600	19,721 74

Step 4 – Taxable income

Canadian Forces personnel and police deduction (box 43 of all T4 slips)	24400		
Security options deductions	24900		
Other payments deduction (Claim the amount from line 14700, unless it includes an amount at line 14600. If so, see line 25000 in the guide.)	25000		
Limited partnership losses of other years	25100		
Non-capital losses of other years	25200		
Net capital losses of other years	25300		
Capital gains deduction (Get and complete Form T657.)	25400		
Northern residents deductions (Get and complete Form T2222.)	25500		
Additional deductions Specify:	25600		
Add lines 24400 to 25600.	25700		▶

Line 23600 minus line 25700 (if negative, enter "0") — This is your **taxable income.** 26000 — 19,721 74

Step 5 – Federal tax (formerly Schedule 1)

Part A – Federal non-refundable tax credits

Basic personal amount	claim $12,069	30000	12,069 00		1
Age amount (if you were born in 1954 or earlier) (Complete the Worksheet for the return.)	(maximum $7,494)	30100			2
Spouse or common-law partner amount (Complete Schedule 5.)		30300			3
Amount for an eligible dependant (Complete Schedule 5.)		30400			4
Canada caregiver amount for spouse or common-law partner, or eligible dependant age 18 or older (Complete Schedule 5.)		30425			5
Canada caregiver amount for other infirm dependants age 18 or older (Complete Schedule 5.)		30450			6
Canada caregiver amount for infirm children under 18 years of age Enter the number of children for whom you are claiming this amount. 30499	x $2,230 =	30500			7
Base CPP or QPP contributions: through employment income (Complete Schedule 8 or get and complete Form RC381, whichever applies.)		30800		•	8
on self-employment and other earnings (Complete Schedule 8 or get and complete Form RC381, whichever applies.)		31000		•	9
Employment insurance premiums: through employment from box 18 and box 55 of all T4 slips	(maximum $860.22)	31200		•	10
on self-employment and other eligible earnings (Complete Schedule 13.)		31217		•	11
Volunteer firefighters' amount		31220			12
Search and rescue volunteers' amount		31240			13
Canada employment amount (Enter $1,222 or the total of your employment income you reported on lines 10100 and 10400, **whichever is less.**)		31260			14
Home buyers' amount		31270			15
Home accessibility expenses (Complete the Worksheet for the return.)	(maximum $10,000)	31285			16
Adoption expenses		31300			17
Pension income amount (Complete the Worksheet for the return.)	(maximum $2,000)	31400			18
Disability amount (for self) (Claim $8,416 or if you were under 18 years of age, complete the Worksheet for the return.)		31600			19
Disability amount transferred from a dependant (Complete the Worksheet for the return.)		31800			20
Interest paid on your student loans (See Guide P105.)		31900			21
Your tuition, education, and textbook amounts (Complete Schedule 11.)		32300			22
Tuition amount transferred from a child		32400			23
Amounts transferred from your spouse or common-law partner (Complete Schedule 2.)		32600			24
Medical expenses for **self, spouse or common-law partner, and your dependent children born in 2002 or later** 33099			25		
Enter $2,352 or 3% of line 23600, **whichever is less.**			26		
Line 25 minus line 26 (if negative, enter "0")			27		
Allowable amount of medical expenses for **other dependants** (Complete the Worksheet for the return.) 33199			28		
Add lines 27 and 28.		▶	33200		29
Add lines 1 to 24, and line 29.			33500	12,069 00	30
Federal non-refundable tax credit rate				15 %	31
Multiply line 30 by line 31.			33800	1,810 35	32
Donations and gifts (Complete Schedule 9.)			34900		33
Add lines 32 and 33. Enter this amount on line 46 on the next page.	**Total federal non-refundable tax credits**		35000	1,810 35	34

Part B – Federal tax on taxable income

Enter your **taxable income** from line 26000.					19,721 74	35
Complete the appropriate column depending on the amount on line 35.	Line 35 is **$47,630** or less	Line 35 is more than **$47,630** but not more than **$95,259**	Line 35 is more than **$95,259** but not more than **$147,667**	Line 35 is more than **$147,667** but not more than **$210,371**	Line 35 is more than **$210,371**	
Enter the amount from line 35.	19,721 74					36
Line 36 minus line 37 (cannot be negative)	0 00	47,630 00	95,259 00	147,667 00	210,371 00	37
	19,721 74					38
Multiply line 38 by line 39.	15 %	20.5 %	26 %	29 %	33 %	39
	2,958 26					40
	0 00	7,145 00	16,908 00	30,535 00	48,719 00	41
Add lines 40 and 41.	2,958 26					42

Part C – Net federal tax

Enter the amount from line 42.		2,958 26	43	
Federal tax on split income (Get and complete Form T1206.)	40424		•44	
Add lines 43 and 44.	40400	2,958 26	▶	2,958 26 45
Enter your total federal non-refundable tax credits from line 34 on the previous page.	35000	1,810 35	46	
Federal dividend tax credit (See line 40425 in the guide.)	40425		•47	
Minimum tax carryover (Get and complete Form T691.)	40427		•48	
Add lines 46, 47, and 48.		1,810 35	▶	1,810 35 49
Line 45 minus line 49 (if negative, enter "0")		**Basic federal tax** 42900		1,147 91 50
Federal foreign tax credit (Get and complete Form T2209.)		40500		51
Line 50 minus line 51 (if negative, enter "0")		**Federal tax** 40600		1,147 91 52
Total federal political contributions (**attach** receipts)	40900		53	
Federal political contribution tax credit (Complete the Worksheet for the return.)	(maximum $650) 41000		•54	
Investment tax credit (Get and complete Form T2038(IND).)	41200		•55	
Labour-sponsored funds tax credit (See lines 41300 and 41400 in the guide.)				
Net cost of shares of a provincially registered fund 41300	Allowable credit 41400		•56	
Add lines 54, 55, and 56.	41600		▶	57
Line 52 minus line 57 (if negative, enter "0")		41700		1,147 91 58
Canada workers benefit advance payments received (box 10 of the RC210 slip)		41500		•59
Special taxes (See line 41800 in the guide.)		41800		60
Add lines 58, 59, and 60. Enter this amount on line 42000 on the next page.		**Net federal tax** 42000		1,147 91 61

Step 6 – Provincial or territorial tax

Complete Form 428 to calculate your provincial tax.

Step 7 – Refund or balance owing

Net federal tax: enter the amount from line 61 from the previous page.		42000	1,147 91
CPP contributions payable on self-employment and other earnings (Complete Schedule 8 or get and complete Form RC381, whichever applies.)		42100	
Employment insurance premiums payable on self-employment and other eligible earnings (Complete Schedule 13.)		42120	
Social benefits repayment (amount from line 23500)		42200	
Provincial or territorial tax (Attach Form 428, even if the result is "0".)		42800	435 12
Add lines 42000, 42100, 42120, 42200, and 42800.	This is your **total payable.**	43500	1,583 03 •
Total income tax deducted (amounts from all Canadian slips)	43700		•
Refundable Quebec abatement (See line 44000 in the guide.)	44000		•
CPP overpayment (See line 30800 in the guide.)	44800		•
Employment insurance overpayment (See line 45000 in the guide.)	45000		•
Climate action incentive (Complete Schedule 14.)	45110		•
Refundable medical expense supplement (Complete the Worksheet for the return.)	45200		•
Canada workers benefit (CWB) (Complete Schedule 6.)	45300		•
Refund of investment tax credit (Get and complete Form T2038(IND).)	45400		•
Part XII.2 trust tax credit (box 38 of all T3 slips and box 209 of all T5013 slips)	45600		•
Employee and partner GST/HST rebate (Get and complete Form GST370.)	45700		•
Eligible educator school supply tax credit: Supplies expenses (maximum $1,000) 46800 x 15%	46900		•
Tax paid by instalments	47600		•
Provincial or territorial credits (Complete Form 479, if it applies.)	47900		•
Add lines 43700 to 45700, and 46900 to 47900.	These are your **total credits.**	48200	▶
Line 43500 minus line 48200	This is your **refund** or **balance owing.**		1,583 03

If the result is negative, you have a **refund.** If the result is positive, you have a **balance owing.**

Enter the amount below on whichever line applies.

Generally, we do not charge or refund a difference of $2 or less.

Refund 48400 •

For more information on how to receive your refund by direct deposit, see line 48400 in the guide or go to **canada.ca/direct-deposit.**

Balance owing 48500 1,583 03 •

For more information on how to make your payment, see line 48500 in the guide or go to **canada.ca/payments.** Your payment is due no later than April 30, 2020.

Ontario **Ontario opportunities fund**

You can help reduce Ontario's debt by completing this area to donate some or all of your 2019 refund to the Ontario opportunities fund. Please see the provincial pages for details.

Amount from line 48400 above			1
Your donation to the Ontario opportunities fund	46500	•	2
Net refund (line 1 minus line 2)	46600	•	3

Prepared without audit from information supplied by the taxpayer

I certify that the information given on this return and in any documents attached is correct and complete and fully discloses all my income.

Sign here _____

It is a serious offence to make a false return.

Telephone number: (416) 464-6139

Date 2020-05-28

If this return was completed by a tax professional, tick the applicable box and provide the following information:

49000 Was a fee charged? Yes [X] 1 No [ ] 2

48900 EFILE number (if applicable): O1335

Name of tax professional: Sobel & Company, Professional Corporation

Telephone number: (416) 504-6360

Personal information (including the SIN) is collected for the purposes of the administration or enforcement of the Income Tax Act and related programs and activities including administering tax, benefits, audit, compliance, and collection. The information collected may be used or disclosed for purposes of other federal acts that provide for the imposition and collection of a tax or duty. It may also be disclosed to other federal, provincial, territorial or foreign government institutions to the extent authorized by law. Failure to provide this information may result in interest payable, penalties or other actions. Under the Privacy Act, individuals have the right to access their personal information, request correction, or file a complaint to the Privacy Commissioner of Canada regarding the handling of the individual's personal information. Refer to Personal Information Bank CRA PPU 005 on Info Source at **canada.ca/cra-info-source.**

Do not use this area 48700 48800 48600 •

Ontario

Ontario Tax

Form ON428
2019

Protected B when completed

This is **Step 6** in completing your return. Complete this form and **attach a copy** to your return.
Claim only the credits that apply to you.

Part A – Ontario non-refundable tax credits

			For internal use only	56050	
Basic personal amount			claim $10,582	58040	10,582 00	1
Age amount (if born in 1954 or earlier) (use Worksheet ON428)			(maximum $5,166)	58080		2
Spouse or common-law partner amount						
Base amount		3				
Your spouse's or common-law partner's net income from line 23600 of their return		4				
Line 3 minus 4 (if negative, enter "0")			(maximum $8,985) ▶	58120		5
Amount for an eligible dependant						
Base amount		6				
Your eligible dependant's net income from line 23600 of their return		7				
Line 6 minus line 7 (if negative, enter "0")			(maximum $8,985) ▶	58160		8
Add lines 1, 2, 5, and 8.					10,582 00	9
Ontario caregiver amount (use Worksheet ON428)				58185		10
CPP or QPP contributions:						
Amount from line 30800 of your return				58240		•11
Amount from line 31000 of your return				58280		•12
Employment insurance premiums:						
Amount from line 31200 of your return				58300		•13
Amount from line 31217 of your return				58305		•14
Adoption expenses			(maximum $12,910)	58330		15
Pension income amount			(maximum $1,463)	58360		16
Disability amount (for self) (Claim **$8,549**, or if you were under 18 years of age, use Worksheet ON428.)				58440		17
Disability amount transferred from a dependant (use Worksheet ON428)				58480		18
Interest paid on your student loans (amount from line 31900 of your return)				58520		19
Your unused tuition and education amounts (attach Schedule ON(S11))				58560		20
Amounts transferred from your spouse or common-law partner (attach Schedule ON(S2))				58640		21
Add lines 9 to 21.					10,582 00	22

Continue on the next page.

Part A – Ontario non-refundable tax credits (continued)

Enter the amount from line 22 of the previous page				10,582 00	23
Medical expenses:					
(Read line 58689 of your income tax package.)	58689		24		
Enter **whichever is less:** $2,395 or 3% of the amount on line 23600 of your return			25		
Line 24 minus line 25 (if negative, enter "0")			26		
Allowable amount of medical expenses for other dependants (use Worksheet ON428)	58729		27		
Add lines 26 and 27.	58769	▶			28
Add lines 23 and 28.			58800	10,582 00	29
Ontario non-refundable tax credit rate				5.05%	30
Multiply line 29 by line 30.			58840	534 39	31
Donations and gifts:					
Amount from line 16 of your federal Schedule 9	x 5.05% =		32		
Amount from line 17 of your federal Schedule 9	x 11.16% =		33		
Add lines 32 and 33.	58969	▶			34
Add lines 31 and 34. Enter this amount on line 47.		**Ontario non-refundable tax credits**	61500	534 39	35

Part B – Ontario tax on taxable income

Enter your **taxable income** from line 26000 of your return.				19,721 74	36

Use the amount from line 36 to decide which column to complete.

	Line 36 is **$43,906** or less	Line 36 is more than **$43,906** but not more than **$87,813**	Line 36 is more than **$87,813** but not more than **$150,000**	Line 36 is more than **$150,000** but not more than **$220,000**	Line 36 is more than **$220,000**	
Amount from line 36	19,721 74					37
Line 37 minus line 38 (cannot be negative)	0 00	43,906 00	87,813 00	150,000 00	220,000 00	38
	19,721 74					39
	5.05 %	9.15 %	11.16 %	12.16 %	13.16 %	40
Multiply line 39 by line 40.	995 95					41
Add lines 41 and 42. **Ontario tax on taxable income**	0 00	2,217 00	6,235 00	13,175 00	21,687 00	42
	995 95					43

Continue on the next page.

Part C – Ontario tax

Enter your Ontario tax on taxable income from line 43 of the previous page.		995 95	44
Enter your Ontario tax on split income from Form T1206.	61510		• 45
Add lines 44 and 45.		995 95	46
Enter your Ontario non-refundable tax credits from line 35 of the previous page.		534 39	47
Line 46 minus line 47 (if negative, enter "0")		461 56	48

Ontario minimum tax carryover

Amount from line 48 above	461 56		49
Enter the Ontario dividend tax credit calculated for line 61520 from your Worksheet ON428.			50
Line 49 minus line 50 (if negative, enter "0").	461 56		51
Amount from line 40427 of your return x 33.67% =			52
Enter whichever is **less**: amount from line 51 or 52.	61540		• 53
Line 48 minus line 53 (if negative, enter "0")		461 56	54

Ontario surtax

Amount from line 54 above	461 56		55
Amount from line 45 above			56
Line 55 minus line 56 (if negative, enter "0")	461 56		57

Complete lines 58 to 60 if the amount on line 57 is **more than $4,740.**
If the amount is **less than $4,740**, enter "0" on line 60 and continue on line 61.

(Line 57 461 56 – $4,740) × 20% (if negative, enter "0") =			58
(Line 57 461 56 – $6,067) × 36% (if negative, enter "0") =			59
Add lines 58 and 59.		▶	60
Add lines 54 and 60.		461 56	61

Ontario dividend tax credit

Amount from line 50 above	61520		• 62
Line 61 minus line 62 (if negative, enter "0")		461 56	63

Ontario additional tax for minimum tax purposes

If you entered an amount on line 98 of Form T691, enter the additional tax for minimum tax purposes calculated for line 64 from your Worksheet ON428.			• 64
Add lines 63 and 64.		461 56	65

Continue on the next page.

Part C – Ontario tax (continued)

Enter the amount from line 65 on the previous page.		461 56	66

Ontario tax reduction

Enter "0" on line 73 if **any** of the following applies to you:

- You were **not** a resident of Canada at the beginning of the year.
- You were **not** a resident of Ontario on December 31, 2019.
- There is an amount on line 64.
- The amount on line 66 is "0".
- Your return is filed for you by a trustee in bankruptcy.
- You are not claiming an Ontario tax reduction.

If none of the above applies to you, complete lines 67 to 73 to calculate your Ontario tax reduction.

Basic reduction		244 00	67	
If you had a spouse or common-law partner on December 31, 2019, **only** the individual with the **higher net income** can claim the amounts on lines 68 and 69.				
Reduction for dependent children born in 2001 or later Number of dependent children 60969 × $452 =			68	
Reduction for dependants with a mental or physical impairment Number of dependants 60970 × $452 =			69	
Add lines 67, 68, and 69.		244 00	70	
Amount from line 70 above 244 00 x 2 =		488 00	71	
Amount from line 66 above		461 56	72	
Line 71 minus line 72 (if negative, enter "0")	**Ontario tax reduction**	26 44	▶	26 44 73
Line 66 minus line 73 (if negative, enter "0")				435 12 74

Ontario foreign tax credit

Credit calculated from Form T2036		75
Line 74 minus line 75 (if negative, enter "0")	435 12	76

Low-income individuals and families tax credit

Credit calculated from Schedule ON428–A	62140		• 77
Line 76 minus line 77 (if negative, enter "0")		435 12	78

Community food program donation tax credit for farmers

Enter the amount of qualifying donations that have also been claimed as a charitable donation. 62150 × 25% =			70
Line 78 minus line 79 (if negative, enter "0")		435 12	80

Ontario health premium

Use the chart on the next page to calculate this amount.	**Ontario health premium** ▶	0 00	81
Add lines 80 and 81. Enter the result on line 42800 of your return.	**Ontario tax**	435 12	82

Continue on the next page.

Part C – Ontario tax (continued)

Ontario Health Premium

Enter your **taxable income** from line 36 of page 2. 19,721 74 **83**

Go to the line on the chart below that corresponds to your taxable income from line 83 to determine your Ontario Health Premium. Enter the result on line 81 of the previous page.

Taxable income										Ontario health premium
not more than **$20,000**	▶		▶		▶					**$ 0**
more than **$20,000**, but not more than **$25,000**		– $	20,000 =		x	6 % =				
more than **$25,000**, but not more than **$36,000**	▶		▶		▶					**$ 300**
more than **$36,000**, but not more than **$38,500**		– $	36,000 =		x	6 % =		+ $	300 =	
more than **$38,500**, but not more than **$48,000**	▶		▶		▶					**$ 450**
more than **$48,000**, but not more than **$48,600**		– $	48,000 =		x	25 % =		+ $	450 =	
more than **$48,600**, but not more than **$72,000**	▶		▶		▶					**$ 600**
more than **$72,000**, but not more than **$72,600**		– $	72,000 =		x	25 % =		+ $	600 =	
more than **$72,600**, but not more than **$200,000**	▶		▶		▶					**$ 750**
more than **$200,000**, but not more than **$200,600**		– $	200,000 =		x	25 % =		+ $	750 =	
more than **$200,600**	▶		▶		▶					**$ 900**

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Statement of Real Estate Rentals

- Use this form if you own and rent real estate or other property. It relates mainly to renting real estate but also covers some other types of rental property such as farmland. This form will help you determine your gross rental income, the expenses you can deduct, and your net rental income or loss for the year.
- To determine whether your rental income is from property or a business, consider the number and types of services you provide for your tenants:
  - If you rent space and only provide basic services such as heating, lighting, parking, laundry facilities, you are earning an income from renting property.
  - If you provide additional services such as cleaning, security, and meals, you may be conducting a business.
- For more information about how to determine if your rental income comes from property or a business, see Interpretation Bulletin IT-434R, Rental of Real Property by Individual, and its Special Release.
- If you are a co-owner of a property, you have to determine if a partnership exists before filling in the Identification part below. To determine if you are in a partnership, see Income Tax Folio S4-F16-C1, What is a Partnership?
- For information on how to fill out this form, see Guide T4036, Rental Income.

Part 1 – Identification

Your name	Your Social Insurance Number (SIN)
Faith Goldy	[redacted]

Your Address: [redacted]

City	Prov./Terr	Postal code
Toronto	ON	[redacted]

Fiscal period from: Date (YYYYMMDD) 2019-01-01 to Date (YYYYMMDD) 2019-12-31

Was this the final year of your rental operation? Yes ☐ No ☒

Your percentage of the partnership	Industry code	Tax shelter identification number (8 characters)	Partnership business number
25.00 %	531111		

Name of person or firm preparing this form	Business number/Account number
Sobel & Company, Professional Corporation	

Address of person or firm preparing this form: 55 Standish Court, Ste 610/Box 4

City	Prov./Terr	Postal code
Mississauga	ON	L5R 4B2

Part 2 – Details of other co-owners and partners

Co-owner or partner's name and address	Share of net income (loss)	Percentage of ownership
K[redacted] G[redacted]	42,500 00	50.00 %
A[redacted] G[redacted]	21,250 00	25.00 %
		%
		%

Part 3 – Income

In most cases, you calculate your rental income using the **accrual method.** If you have no amounts receivable and no expenses outstanding at the end of the year, you can use the **cash method.**

List the addresses of your rental properties	Number of units	Gross rents	
[redacted]	1	85,000 00	1
			2
			3

Enter the total of your gross rents in the year you receive them (amount 1 **plus** amount 2 **plus** amount 3)	8141	85,000 00
Other income (for example, premiums and leases, sharecropping)	8230	
Total gross rental income – Enter this amount on your Income Tax and Benefit Return on line 12599 (line 8141 **plus** line 8230)	8299	85,000 00

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Part 4 – Expenses

		Total expenses	Personal portion
Advertising	8521		
Insurance	8690		
Interest and bank charges	8710		
Office expenses	8810		
Professional fees (includes legal and accounting fees)	8860		
Management and administration fees	8871		
Repairs and maintenance	8960		
Salaries, wages, and benefits (including employer's contributions)	9060		
Property taxes	9180		
Travel	9200		
Utilities	9220		
Motor vehicle expenses (not including capital cost allowance)	9281		
Other expenses	9270		

Total expenses (add the lines listed under "Total expenses") | A

Total for personal portion (add the lines listed under "Personal portion") 9949

Deductible expenses (total expenses from amount A **minus** total personal portion on line 9949)			4
Net income (loss) before adjustments (total gross rental income from line 8299 **minus** deductible expenses from amount 4)	9369	85,000 00	
Co-owner – calculate your share of net income from line 9369. Enter your result on amount 5		21,250 00	5
Other expenses of the co-owner – other deductible expenses you have as a co-owner which you did not deduct elsewhere	9945		
Subtotal (amount 5 **minus** line 9945)		21,250 00	6
Recaptured capital cost allowance (co-owners – enter your share of the amount)	9947		
Subtotal (amount 6 **plus** line 9947)		21,250 00	7
Terminal loss (co-owners – enter your share of the amount)	9948		
Subtotal (amount 7 **minus** line 9948)		21,250 00	8
Total capital cost allowance claim for the year (amount I from Area A)	9936	3,862 50	
Net income (loss) (amount 8 **minus** line 9936)		17,387 50	9
If you are a sole proprietor or a co-owner enter this amount on line 9946.			
Partnerships			
Partners – your share of amount 9, or the amount from your T5013 slip, *Statement of Partnership Income*			10
Partners – GST/HST rebate for partners received in the year	9974		
Partners – other expenses of the partner	9943		
Your net income (loss) – For sole proprietors or co-owners, enter this amount on your income tax and benefit return on line 12600. For partnerships, enter the result of amount 10 **plus** line 9974 **minus** line 9943. Enter this amount on your Income Tax and Benefit Return on line 12600	9946	17,387 50	

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The capital cost allowance (CCA) you can claim depends on the type of rental property you own and the date you acquired it. Group the depreciable property you own into the appropriate classes. A specific rate of CCA generally applies to each class.

Area A – Calculation of capital cost allowance claim

	1 Class number	2 Undepreciated capital cost (UCC) at the start of the year	Amount to be subtracted	3 Cost of additions in the year (see Area B and C below)	4 Cost of additions from column 3 which are for AIIP or one or more zero-emission vehicles (ZEV) **Note 1**	5 Proceeds of dispositions in the year (see Area D and E below)	6* UCC after additions and dispositions (2 + 3 - 5)	7 Proceeds of dispositions available to reduce additions of AIIP and ZEV (5 - 3 + 4) **Note 2**
1	1	96,562 48					96,562 48	
2								

	1 Class number	8 UCC adjustment for current-year additions of AIIP and ZEV (4 - 7) **multiplied** by the relevant factor **Note 3**	9 Adjustment for current-year additions subject to the half year-rule 1/2 x (3 - 4 - 5)	10 Base amount for CCA (6+ 8 - 9)	11 CCA Rate (%)	12 CCA for the year (10 multiplied 11 or a lower amount)	13 UCC at the end of the year (6 - 12)
1	1			96,562 48	4.00	3,862 50	92,699 98
2							

Total CCA claim for the year: Total of column 12** (enter the amount on line 9936 of Part 4, amount **i minus** any personal part and any CCA for business-use-of-home expenses***) 3,862 50 **i**

* If you have a negative amount in column 6, add it to income as a recapture under 'Recaptured capital cost allowance' on line 9947. If no property is left in the class and there is a positive amount in the column, deduct the amount from your income as a terminal loss under 'Terminal loss' on line 9948. For more information, read Chapter 3 of Guide T4036.

** For information on CCA for "Calculation of business-use-of-home expenses," see "Special situations" in Chapter 4 of Guide T4002. To help you calculate the capital cost allowance claim, see the calculation charts in Areas B to F.

*** Sole proprietors and partnerships - enter the total CCA claim for the year from amount i on line 9936.
Co-owners - enter only your share of the total CCA claim for the year from amount i on line 9936.

Note 1: Columns 4, 7, and 8 apply only to accelerated investment incentive properties (AIIPs) (see Regulation 1104(4) of the Income Tax Regulations for the definition), zero-emission vehicles, and zero-emission passenger vehicles. In this chart ZEV represents both zero-emission vehicles and zero-emission passenger vehicles. An AIIP is a property (other than ZEV) that you acquired after November 20, 2018 and became available for use before 2028. A ZEV is a motor vehicle included in Class 54 or 55 that you acquired after March 18, 2019 and became available for use before 2028. For more information on AIIP and ZEV, see guide T4036.

Note 2: The proceeds of disposition of a zero-emission passenger vehicle (ZEPV) that has been included in Class 54 and that is subject to the $55,000 capital cost limit will be adjusted based on a factor equal to the capital cost limit of $55,000 as a proportion of the actual cost of the vehicle. For dispositions after July 29, 2019, the government proposes that the actual cost of the vehicle be adjusted for any payments or repayments of government assistance that you may have received or repaid in respect of the vehicle. For more information on proceeds of disposition, read Class 54 in guide T4036.

Note 3: The relevant factors for properties available for use before 2024 are 2 1/3 (classes 43.1 and 54), 1 1/2 (class 55), 1 (classes 43.2 and 53), 0 (classes 12 and 13), and 1/2 for the remaining accelerated investment incentive properties.

For more information on AIIP and ZEV, see Guide T4036 or go to **canada.ca/taxes-accelerated-investment-income.**

List all equipment or other property you acquired or improved in the current tax year, and group them into the appropriate classes. Equipment includes appliances such as a washer and dryer; maintenance equipment such as a lawn mower or a snow blower; and other property such as furniture and some fixtures you acquired to use in your rental operation.

Area B – Equipment additions in the year

1 Class number	2 Property details	3 Total cost	4 Personal portion (if applicable)	5 Rental portion (col.3 **minus** col.4)

Total equipment additions in the year (total of column 5) 9925

List all building or leasehold interest additions you acquired or improved in the current tax year. Group the depreciable property you own into the appropriate classes.

Area C – Building additions in the year

1 Class number	2 Property details	3 Total cost	4 Personal portion (if applicable)	5 Rental portion (col.3 minus col.4)

Total of building additions in the year (total of column 5) 9927

Area D – Equipment dispositions in the year

1 Class number	2 Property details	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal portion (if applicable)	5 Rental portion (col.3 minus col.4)

Total equipment dispositions in the year (total of column 5) 9926

Area E – Building dispositions in the year

1 Class number	2 Property details	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal portion (if applicable)	5 Rental portion (col.3 minus col.4)

Total building dispositions in the year (total of column 5) 9928

Area F – Land additions and dispositions in the year

Total cost of all land additions in the year	9923	
Total proceeds from all land dispositions in the year	9924	

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Statement of Business or Professional Activities

- Use this form to calculate your self-employment business and professional income.
- For each business or profession, fill in a **separate** Form T2125.
- Fill in this form and send it with your income tax and benefit return.
- For more information on how to fill in this form, see guide T4002, Self-employed Business, Professional, Commission, Farming, and Fishing Income.

Part 1 – Identification

Your name Faith Goldy	Your social insurance number [redacted]
Business name Faith Goldy	Business number [redacted]
Business address [redacted]	
City Toronto	Prov./Terr. ON
	Postal code [redacted]
Fiscal period — Date (YYYYMMDD) From 2019-01-01 to Date (YYYYMMDD) 2019-12-31	Was this your last year of business? Yes ☐ No ☒
Main product or service Reporter	Industry code (see the appendix in Guide T4002) 519190
Accounting method (commission only) ☐ Cash ☒ Accrual	Tax shelter identification number
Partnership business number	Your percentage of the partnership %
Name and address of person or firm preparing this form	Sobel & Company, Professional Corporation 55 Standish Court, Ste 610/Box 4 Mississauga ON L5R 4B2

Part 2 – Internet business activities

If your web pages or websites generate business or professional income, fill in this part of the form.

How many Internet web pages and websites does your business earn income from? Enter "0" if none . . . . . .

Provide up to five main web page or website addresses, also known as uniform resource locator (URL):

http://

http://

http://

http://

http://

Percentage of your gross income generated from the web pages and websites.
(If no income was generated from the Internet, enter "0".) . . . . . %

Part 3A – Business income
Fill in this part **only** if you have business income. If you have professional income, leave this part blank and fill in Part 3B.
If you have both business and professional income, you have to fill out a separate Form T2125 for each.

Part 3B – Professional income
Fill in this part **only** if you have professional income. If you have business income, leave this part blank and fill in Part 3A.
If you have both business and professional income, you have to fill out a separate Form T2125 for each.

Note: New rules allow you to include your work in progress (WIP) progressively if you elected to use billed basis accounting for the last tax year that started before March 22, 2017. Generally, for the first tax year that starts after March 21, 2017, you must include 20% of the lesser of the cost and the fair market value of WIP. The inclusion rate increases to 40% in the second tax year that starts after March 21, 2017, 60% in the third year, 80% in the fourth year, and 100% in the fifth and all subsequent tax years. For more information, see chapter 2 of guide T4002.

Part 3A – Business income

Gross sales, commissions, or fees (include GST/HST collected or collectible)		13,673 15 3A
GST/HST, provincial sales tax, returns, allowances, discounts, and GST/HST adjustments (included in amount 3A)		3B
Subtotal: Amount 3A **minus** amount 3B		13,673 15 3C
If you are using the quick method for GST/HST – Government assistance calculated as follows: GST/HST collected or collectible on sales, commissions and fees eligible for the quick method	3D	
GST/HST remitted, (sales, commissions, and fees eligible for the quick method **plus** GST/HST collected or collectible) **multiplied** by the applicable quick method remittance rate	3E	
Subtotal: Amount 3D **minus** amount 3E		3F
Adjusted gross sales: Amount 3C **plus** amount 3F (enter on line 8000 of Part 3C)		13,673 15 3G

Part 3B – Professional income

Gross professional fees including work-in-progress (WIP) and GST/HST collected or collectible		3H
GST/HST, provincial sales tax, returns, allowances, discounts, and GST/HST adjustments (included in amount 3H) and any WIP at the end of the year you elected to exclude		3I
Subtotal: Amount 3H **minus** amount 3I		3J
If you are using the quick method for GST/HST – Government assistance calculated as follows: GST/HST collected or collectible on professional fees eligible for the quick method	3K	
GST/HST remitted, (professional fees eligible for the quick method **plus** GST/HST collected or collectible) **multiplied** by the applicable quick method remittance rate	3L	
Subtotal: Amount 3K **minus** amount 3L		3M
Work-in-progress (WIP), start of the year, per election to exclude WIP (see Guide T4002, Chapter 2)		3N
Adjusted professional fees: Amount 3J **plus** amount 3M **plus** amount 3N (enter on line 8000 of Part 3C)		3O

Part 3C – Gross business or professional income

Adjusted gross sales (amount 3G) or adjusted professional fees (amount 3O)		8000	13,673 15
Reserves deducted last year	8290		
Other income	8230		
Subtotal: Line 8290 **plus** line 8230		▶	3P
Gross business or professional income: Line 8000 **plus** amount 3P		8299	13,673 15

Report the gross business or professional income from line 8299 on the applicable line of your income tax and benefit return as indicated below:
- business income on line 13499
- professional income on line 13699
- commission income on line 13899

For Parts 3D, 4, and 5, if GST/HST has been remitted or an input tax credit has been claimed, do not include GST/HST when you calculate the cost of goods sold, expenses, or net income (loss).

Part 3D – Cost of goods sold and gross profit

If you have business income, fill in this part. Enter only the business part of the costs.

Gross business income (line 8299 of Part 3C)			13,673 15 3Q
Opening inventory (include raw materials, goods in process, and finished goods)	8300		3R
Purchases during the year (net of returns, allowances, and discounts)	8320		3S
Direct wage costs	8340		3T
Subcontracts	8360		3U
Other costs	8450		3V
Subtotal: Add amounts 3R to 3V			3W
Closing inventory (include raw materials, goods in process, and finished goods)	8500		
Cost of goods sold: Amount 3W **minus** line 8500	8518	▶	
Gross profit (or loss): Amount 3Q **minus** line 8518		8519	13,673 15

Part 4 – Net income (loss) before adjustments

Gross business or professional income (line 8299 of Part 3C) or **Gross profit** (line 8519 of Part 3D)				13,673 15 4A
Expenses (enter only the business part)				
Advertising	8521	909 00	4B	
Meals and entertainment	8523		4C	
Bad debts	8590		4D	
Insurance	8690		4E	
Interest and bank charges	8710	545 91	4F	
Business taxes, licences, and memberships	8760		4G	
Office expenses	8810	120 00	4H	
Office stationery and supplies	8811		4I	
Professional fees (includes legal and accounting fees)	8860	9,071 00	4J	
Management and administration fees	8871		4K	
Rent	8910		4L	
Repairs and maintenance	8960		4M	
Salaries, wages, and benefits (including employer's contributions)	9060		4N	
Property taxes	9180		4O	
Travel expenses	9200		4P	
Utilities	9220		4Q	
Fuel costs (except for motor vehicles)	9224		4R	
Delivery, freight, and express	9275		4T	
Motor vehicle expenses (not including CCA) (amount 15 of Chart A)	9281	440 00	4T	
Capital cost allowance (CCA). Enter amount I of Area A **minus** any personal part and any CCA for business-use-of-home expenses	9936		4U	
Other expenses (specify):	9270		4V	
Equipment rental		253 00		
Total expenses: Total of amounts 4B to 4V	9368	11,338 91	▶	11,338 91
Net income (loss) before adjustments: Amount 4A **minus** line 9368			9369	2,334 24

Part 5 – Your net income (loss)

Your share of line 9369 or the amount from your T5013 slip, Statement of Partnership Income		2,334 24	5A	
GST/HST rebate for partners received in the year	9974			
Total: Amount 5A **plus** line 9974		2,334 24	▶	2,334 24 5B
Minus: Other amounts deductible from your share of the net partnership income (loss) (amount 6F)			9943	
Net income (loss) after adjustments: Amount 5B **minus** line 9943				2,334 24 5C
Business-use-of-home expenses (amount 7P)			9945	
Your net income (loss): Amount 5C **minus** line 9945			9946	2,334 24

Report the net income amount from line 9946 on the applicable line of your income tax and benefit return as indicated below:

- business income on line 13500
- professional income on line 13700
- commission income on line 13900

Part 6 – Other amounts deductible from your share of the net partnership income (loss)

Claim expenses you incurred that were not included in the partnership statement of income and expenses, and for which the partnership did not reimburse you. These claims must not be included in the claims already calculated for the partnership.

List details of expenses:	Expense amounts	
Business use of motor vehicle		6A
Meals and entertainment		6B
Private health services plan premiums		6C
		6D
		6E
		6E
		6E
		6E
		6E
		6E
		6E
Total other amounts deductible from your share of the net partnership income (loss): Add amounts 6A to 6E (enter this on line 9943 of Part 5)		6F

Part 7 – Calculation of business-use-of-home expenses

Heat		7A
Electricity		7B
Insurance		7C
Maintenance		7D
Mortgage interest		7E
Property taxes		7F
Other expenses (specify):		7G
Subtotal: Add amounts 7A to 7G		7H
Minus: Personal-use part of the business-use-of-home expenses		7I
Subtotal: Amount 7H **minus** amount 7I		7J
Capital cost allowance (business part only), which means amount i of Area A minus any portion of CCA that is for personal use or entered on line 9936 of Part 4		7K
Amount carried forward from previous year		7L
Subtotal: Add amounts 7J to 7L		7M
Net income (loss) after adjustments (amount 5C) (if negative, enter "0")	2,334 24	7N
Business-use-of-home expenses available to carry forward: Amount 7M **minus** amount 7N (if negative, enter "0")		7O
Allowable claim: The lesser of amount 7M and 7N above (enter your share of this amount on line 9945 of Part 5)		7P

Part 8 – Details of other partners

Do not fill in this chart if you must file a partnership information return.

Name of partner / Address	Prov./Terr.	Postal code	Share of net income or (loss)	Percentage of partnership
			$	%
			$	%
			$	%
			$	%

Part 9 – Details of equity

Total business liabilities	9931	
Drawings in the current year	9932	
Capital contributions in the current year	9933	

Area A – Calculation of capital cost allowance (CCA) claim

CCA other than classes 10.1 and 13

1 Class number	2 Undepreciated capital cost (UCC) at the start of the year	Amount to be subtracted	3 Cost of additions in the year (see Area B and C below)	4 Cost of additions from column 3 which are AIIP or zero-emission vehicles (ZEV) **Note 1**	5 Proceeds of dispositions in the year (see Area D and E below)	6* UCC after additions and dispositions (2 + 3 - 5)	7 Proceeds of dispositions available to reduce additions of AIIP and ZEV (5 - 3 + 4) **Note 2**

1 Class number	8 UCC adjustment for current-year additions of AIIP and ZEV (4 - 7) **multiplied** by the relevant factor **Note 3**	9 Adjustment for current-year additions subject to the half year-rule 1/2 x (3 - 4 - 5)	10 Base amount for CCA (6+ 8 - 9)	11 CCA Rate (%)	12 CCA for the year (10 multiplied by 11 or a lower amount)	13 UCC at the end of the year (6 - 12)

Total CCA for classes other than 10.1 and 13. ▶

Total CCA claim for the year: Total of column 12 (enter the amount on line 9936 of Part 4, amount i **minus** any personal part and any CCA for business-use-of-home expenses**) ▶ i

* If you have a negative amount in column 6, add it to income as a recapture in Part 3C on line 8230. If no property is left in the class and there is a positive amount in the column, deduct the amount from income as a terminal loss in Part 4 on line 9270. Recapture and terminal loss do not apply to a class 10.1 property. For more information, read Chapter 3 of guide T4002.

** For information on CCA for "Calculation of business-use-of-home expenses," see "Special situations" in Chapter 4 of guide T4002. To help you calculate the capital cost allowance claim, see the calculation charts in Areas B to F.

Note 1: Columns 4, 7, and 8 apply only to accelerated investment incentive properties (AIIPs) (see Regulation 1104(4) of the Income Tax Regulations for the definition), zero-emission vehicles, and zero-emission passenger vehicles. In this chart ZEV represents both zero-emission vehicles and zero-emission passenger vehicles. An AIIP is a property (other than ZEV) that you acquired after November 20, 2018 and became available for use before 2028. A ZEV is a motor vehicle included in Class 54 or 55 that you acquired after March 18, 2019 and became available for use before 2028. For more information on AIIP and ZEV, see guide T4002.

Note 2: The proceeds of disposition of a zero-emission passenger vehicle (ZEPV) that has been included in Class 54 and that is subject to the $55,000 capital cost limit will be adjusted based on a factor equal to the capital cost limit of $55,000 as a proportion of the actual cost of the vehicle. For dispositions after July 29, 2019, the government proposes that the actual cost of the vehicle be adjusted for any payments or repayments of government assistance that you may have received or repaid in respect of the vehicle. For more information on proceeds of disposition, read Class 54 in guide T4002.

Note 3: The relevant factors for properties available for use before 2024 are 2 1/3 (classes 43.1 and 54), 1 1/2 (class 55), 1 (classes 43.2 and 53), 0 (classes 12, 13, 14, 15), and 1/2 for the remaining accelerated investment incentive properties

For more information on accelerated investment incentive properties, see guide T4002 or go to canada.ca/taxes-accelerated-investment-income.

Area B – Equipment additions in the year

1 Class number	2 Property description	3 Total cost	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)

Total equipment additions in the year: Total of column 5 9925

Area C – Building additions in the year

1 Class number	2 Property description	3 Total cost	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)

Total of building additions in the year: Total of column 5 9927

Area D – Equipment dispositions in the year

1 Class number	2 Property description	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)

Note: If you disposed of property in the year, see Chapter 3 of guide T4002 for information about your proceeds of disposition.

Total equipment dispositions in the year: Total of column 5 9926

Area E – Building dispositions in the year

1 Class number	2 Property description	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)

Note: If you disposed of property in the year, see Chapter 3 of guide T4002 for information about your proceeds of disposition.

Total building dispositions in the year: Total of column 5 9928

Area F – Land additions and dispositions in the year

Total cost of all land additions in the year	9923
Total proceeds from all land dispositions in the year	9924

Note: You cannot claim capital cost allowance on land. For more information, see Chapter 3 of Guide T4002.

See the privacy notice on your return

TAB 5

SUDBURY ON P3A 5C1

000010426

FAITH GOLDY
[redacted]

Notice details

Social insurance number	XXX XX[redacted]
Tax year	2018
Date issued	Jun 25, 2019

SX4FM9MZ

Notice of assessment

We assessed your 2018 income tax and benefit return and calculated your balance.

You need to pay **$1,096.48** minus any amounts you paid that we have not processed yet.

To avoid additional interest charges please pay by **July 15, 2019**.

Thank you,

Bob Hamilton
Commissioner of Revenue

Account summary

You have an amount due. If you already paid the full amount, please ignore this request.

Amount due: $1,096.48

Pay by: July 15, 2019

Payment options

You can:

- **pay online**
- **pay at your financial institution**

For more information, see page 4.

Canada

FAITH GOLDY
[redacted]

Notice details

Social insurance number	XXX XX[redacted]
Tax year	2018

Tax assessment

We calculated your taxes using the amounts below. The following summary is based on the information we have or you gave us.

We may review your return later to verify income you reported or deductions or credits you claimed. For more information, go to **canada.ca/taxes-reviews**. Keep all your slips, receipts, and other supporting documents in case we ask to see them.

Summary

Line	Description	$ Final amount	CR/DR
150	Total income	17,184	
236	Net income	17,184	
260	Taxable income	17,184	
350	Total federal non-refundable tax credits	1,771	
6150	Total Ontario non-refundable tax credits	522	
420	Net federal tax	804.92	
428	Net Ontario tax	213.13	
435	Total payable	1,018.05	
437	Total income tax deducted	0.00	
482	Total credits	0.00	
	Total payable minus Total credits	1,018.05	DR √
	Arrears interest	9.42	DR
	Balance from this assessment	1,027.47	DR
	Previous account balance	69.01	DR
	Balance due	**1,096.48**	**DR**

Explanation of changes and other important information

We assessed your return and you have a balance due. If you paid this balance and your payment is not appearing on this notice, please note it may take up to 10 business days for your payment to be reflected in our system. If you have not paid this balance, you can avoid additional interest charges by paying the full amount by July 15, 2019. You can view your account balance and statement of account online using My Account.

You can also use the CRA's Individual Tax Account Balance Automated Service by calling 1-866-474-8272. This service is available seven days a week and allows you to quickly get your account balance and information about your last payment. You will be asked to provide your social insurance number, your date of birth, and the amount reported at line 150 on your tax return.

FAITH GOLDY
[redacted]

Notice details

Social insurance number	XXX XX[redacted]
Tax year	2018

We will automatically calculate your goods and services tax/harmonized sales tax credit and any related provincial credit based on your family net income, province of residence, marital status, and qualified children. If you qualify for any credit for July 2019 to June 2020, we will soon let you know.

Your balance due includes arrears interest compounded daily at a set rate. We calculated this interest from the due date of your balance to the date of this notice.

RRSP/PRPP deduction limit statement

For more information about the details listed below or how employer contributions to a PRPP or group RRSP will affect your contribution room for the year, go to **canada.ca/rrsp** or refer to Guide T4040, RRSPs and Other Registered Plans for Retirement.

Description	$ Amount
RRSP/PRPP deduction limit for 2018	90,862
Minus: Employer's PRPP contributions for 2018	0
Minus: Allowable RRSP/PRPP contributions deducted for 2018	0
Plus: 18% of 2018 earned income, up to a maximum of $26,500	3,093
Minus: 2018 pension adjustment	0
Minus: 2019 net past service pension adjustment	0
Plus: 2019 pension adjustment reversal	0
RRSP/PRPP deduction limit for 2019	**93,955**
Minus: Unused RRSP/PRPP contributions previously reported and available to deduct for 2019	0
Available contribution room for 2019	**93,955**

Note: If your available contribution room is a negative amount (shown in brackets), you have no contribution room available for 2019 and may have over contributed to your RRSP/PRPP. If this is the case, you may have to pay tax on any excess contributions.

More information

If you need more information about your income tax and benefit return, go to **canada.ca/taxes**, go to My Account at **canada.ca/guide-my-cra-account**, or call **1-800-959-8281**.

To find your tax centre, go to **canada.ca/cra-offices**.

If you move

Let us know your new address as soon as possible. For more information on changing your address, go to **canada.ca/cra-change-address**.

If you have new or additional information and want to change your return:

- go to **canada.ca/change-tax-return** for faster service; or
- write to the tax centre address shown on this notice, and include your social insurance number and any documents supporting the change.

If you want to register a formal dispute:

- go to **canada.ca/cra-complaints-disputes**; you have 90 days from the date of this notice to register your dispute.

Definitions

DR (debit) is the amount you owe us and **CR** (credit) is the amount we owe you.

Help for persons with hearing, speech, or visual impairments

You can get this notice in braille, large print, or audio format. For more information about other formats, go to **canada.ca/cra-multiple-formats**.

If you use a teletypewriter, you can get tax information by calling **1-800-665-0354**.

How do you pay?

- online or by phone using a Canadian financial institution's services
- online at **canada.ca/cra-my-payment**
- online by setting up a pre-authorized debit agreement at **canada.ca/guide-my-cra-account**
- in person with your remittance voucher at your Canadian financial institution or, for a fee, at Canada Post

For more information on how to make a payment, go to **canada.ca/payments**.

Need more time to pay?

If you cannot pay in full and you would like more information, go to **canada.ca/cra-collections**.

To discuss a payment arrangement, call the CRA at **1-888-863-8657**, Monday to Friday (except holidays) from 7:00 a.m. to 11:00 p.m. Eastern time.

My Account

Use My Account to see and manage your tax information online. Make changes to your return, check your RRSP information, set up direct deposit, and more. To register for My Account, go to **cra.gc.ca/myaccount**.

Fraudulent communications (scams)

The CRA is committed to protecting the personal information of taxpayers and benefit recipients. We will never ask you to give us personal information of any kind by email, text message, or by clicking on a link. Nor will we ask you to pay your balance through the use of a pre-paid credit card. For more information about how to recognize scams and protect yourself, go to **cra.gc.ca/security**.

SUDBURY ON P3A 5C1

000052884

FAITH GOLDY
[redacted]

Notice details

Social insurance number	XXX XX[redacted]
Tax year	2019
Date issued	Jun 11, 2020

SX4FM9MZ

Notice of assessment

We assessed your 2019 income tax and benefit return and calculated your balance.

You need to pay **$1,631.59** minus any amounts you paid that we have not processed yet.

To avoid additional interest charges please pay by **September 1, 2020.**

Thank you,

Bob Hamilton
Commissioner of Revenue

Account summary

You have an amount due. If you already paid the full amount, please ignore this request.

Amount due: $1,631.59

Pay by: September 1, 2020

Payment options

You can:

- **pay online**
- **pay at your financial institution**

For more information, see page 4.

Canada

FAITH GOLDY
[redacted]

Notice details

Social insurance number	XXX XX[redacted]
Tax year	2019

Tax assessment

We calculated your taxes using the amounts below. The following summary is based on the information we have or you gave us.

We may review your return later to verify income you reported or deductions or credits you claimed. For more information, go to **canada.ca/taxes-reviews**. Keep all your slips, receipts, and other supporting documents in case we ask to see them.

Summary

Line	Description	$ Final amount	CR/DR
15000	Total income	19,721	
23600	Net income	19,721	
26000	Taxable income	19,721	
35000	Total federal non-refundable tax credits	1,810	
61500	Total Ontario non-refundable tax credits	534	
42000	Net federal tax	1,147.47	
42800	Net Ontario tax	435.56	
43500	Total payable	1,583.03	
43700	Total income tax deducted	0.00	
48200	Total credits	0.00	
	Total payable minus Total credits	1,583.03	DR √
	Balance from this assessment	1,583.03	DR
	Previous account balance	48.56	DR
	Balance due	**1,631.59**	**DR**

Explanation of changes and other important information

We assessed your return and you have a balance due. If you paid this balance and your payment is not appearing on this notice, please note it may take up to 10 business days for your payment to be reflected in our system. You can view your account balance and statement of account online using My Account.

You can also use the CRA's Individual Tax Account Balance Automated Service by calling 1-866-474-8272. This service is available seven days a week and allows you to quickly get your account balance and information about your last payment. You will be asked to provide your social insurance number, your date of birth, and the amount reported at line 15000 on your tax return.

If you have any questions about your assessment, please call our Individual Tax and Enquiries line at 1-800-959-8281.

Notice details

Social insurance number	XXX XX[redacted]
Tax year	2019

FAITH GOLDY
[redacted]

RRSP deduction limit statement

For more information about the details listed below or how employer contributions to a PRPP or group RRSP will affect your contribution room for the year, go to **canada.ca/rrsp** or refer to Guide T4040, RRSPs and Other Registered Plans for Retirement.

Description	$ Amount
RRSP deduction limit for 2019	93,955
Minus: Employer's PRPP contributions for 2019	0
Minus: Allowable RRSP contributions deducted for 2019	0
Plus: 18% of 2019 earned income, up to a maximum of $27,230	3,549
Minus: 2019 pension adjustment	0
Minus: 2020 net past service pension adjustment	0
Plus: 2020 pension adjustment reversal	0
RRSP deduction limit for 2020	**97,504**
Minus: Unused RRSP contributions previously reported and available to deduct for 2020	0
Available contribution room for 2020	**97,504**

Note: If your available contribution room is a negative amount (shown in brackets), you have no contribution room available for 2020 and may have over contributed to your RRSP. If this is the case, you may have to pay a 1% monthly tax on any excess contributions.

More information

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The CRA is committed to protecting the personal information of taxpayers and benefit recipients. We will never ask you to give us personal information of any kind by email, text message, or by clicking on a link. Nor will we ask you to pay your balance through the use of a pre-paid credit card. For more information about how to recognize scams and protect yourself, go to **canada.ca/taxes-security**.

TAB 6

Diane Ross

From: Virgin Mobile Canada <team@virginmobile.ca>
Sent: Tuesday, November 27, 2018 2:54 PM
To: faithfortoronto@gmail.com
Subject: Your monthly Virgin Mobile e-bill is ready!

Virgin plus

HI. MY NAME IS BILL.

Hey there Faith,

Your November e-bill for **account number 532995587** is now online. The total balance on your current bill will be automatically charged to your bank account.

Account Info

Phone Number(s):	416-453-8564, 416-436-7932
Member Name:	Faith Goldy
Bill Date:	November 23, 2018
Amount Due:	$144.08
Payment Date:	December 10, 2018

View and Pay

Check out our new Virgin Mobile My Account App

- Manage your account 24/7

- Pay your bill
- View your usage
- Manage your add-ons and travel passes
- Check your upgrade eligibility

Learn More

Download Now

Lots of love,
Virgin Mobile

WE'RE EVERYWHERE

Contact Us | Legal & Regulatory | Privacy

Head Office of Virgin Mobile Canada, 720 King St. W, Suite 905, Toronto, ON, M5V 2T3
virginmobile.ca

Diane Ross

From: Virgin Mobile Canada <team@virginmobile.ca>
Sent: Tuesday, December 25, 2018 2:38 PM
To: faithfortoronto@gmail.com
Subject: Your monthly Virgin Mobile e-bill is ready!

Virgin plus

HI. MY NAME IS BILL.

Hey there Faith,

Your December e-bill for **account number 532995587** is now online. The total balance on your current bill will be automatically charged to your bank account.

Account Info

Phone Number(s):	416-453-8564, 416-436-7932
Member Name:	Faith Goldy
Bill Date:	December 23, 2018
Amount Due:	$144.08
Payment Date:	January 09, 2019

View and Pay

Check out our new Virgin Mobile My Account App

- Manage your account 24/7

- Pay your bill
- View your usage
- Manage your add-ons and travel passes
- Check your upgrade eligibility

Learn More

Download Now

Lots of love,
Virgin Mobile

WE'RE EVERYWHERE

Contact Us | Legal & Regulatory | Privacy

Head Office of Virgin Mobile Canada, 720 King St. W, Suite 905, Toronto, ON, M5V 2T3
virginmobile.ca

TAB 7

Cc: Eric K. Gillespie <egillespie@gillespielaw.ca>,Sarah Quildon <squildon@gillespielaw.ca>
Dear Mr Molson,

Please accept this as receipt of your previous email. I shall respond to your questions in kind sometime shortly after January 10th as we are amid Ukrainian Catholic High Holy Days, which I observe. Thank you.

Sent from ProtonMail for iOS

On Sun, Dec 26, 2021 at 7:30 PM, William Molson <william@molsonca.com> wrote:

> Dear Ms Goldy
>
> I have reviewed materials provided by you and have a small number of questions arising therefrom and from other materials assembled. Please respond to this email at your earliest convenience, as I am keen to complete my report.
>
> 1. Have all expenses that appeared in the Financial statement filed, and in the additional material provided to the City at the time of filing, being paid off by you? If some expenses were paid by third parties, please provide additional details, e.g. Who paid how much and what for. You have already provided information that identifies how the payment to the auditor was funded, so that information is not needed;
> 2. What date did Josef Viezner become your spouse? Information that I have presently indicates December 2018. (This impacts disclosure, as standard limits do not apply to spousal contributions);
> 3. Please correct and/or complete and confirm as correct amounts showing in the fields in the attached excerpt from your 2018 personal income tax return. It appears that in the process of redacting the return, certain fields may have been deleted and/or overwritten (Professional fees; Utilities; and the expenses do not add up to the total of expenses provided;
> 4. Please clarify how rental income, of which you are reporting a 25% share, was actually collected. Did you collect rents from tenants and distribute it to other persons, or, did other person(s) collect the rent and provide your share to you, or, otherwise? (This potentially impacts my review of apparent cash flows);
> 5. Please identify the source and nature (e.g. gift, loan, etc.) of the following deposits to your personal bank account. This information is requested for the purpose, if possible, of eliminating this information from further consideration:
> -Oct 4, 2018 50,000.00 (this may relate to funding Clayton Ruby's fees)

TAB 8

Julian Heller and Associates
Lawyers

Suite 2501
120 Adelaide Street West
Toronto ON Canada M5H 1T1
T 416.364.2404 F 416.364.0793
www.julianheller.com

jheller@julianheller.com

VIA EMAIL william@molsonca.com
info@MolsonCPA.com

January 21, 2022

William Molson CPA
2333 Queen Street East
Toronto, Ontario
M4E 1H1

Dear Sir:

RE: Faith Goldy - City of Toronto Compliance Audit
File No.52722

I am counsel to candidate Faith Goldy. I have been provided with a copy of your report for the City of Toronto dated January 12, 2022. Please provide me with a copy of all of the documents which you obtained during the course of your investigation including bank statements, payment records, and all data obtained by you whether or not you relied upon it in the report.

As a specific request including the above, please provide me with bank statements and working papers which support the total figures which you have referenced in your report. For example, expenses of $86,398.49, contributions of $56,117.95, contributions of $12,365.99, contributions of $101,118.00, and excess contributions of $56,388.63. (Figures are all referenced in the summary of findings on page 2 of your report, at paragraphs 1.1, 1.2. and 1.3)

I look forward to your compliance in order that my client may properly respond to your report and make submissions to the Compliance Audit Committee at its meeting currently scheduled for February 8, 2022. As you are aware, the deadline for Ms. Goldy to submit a written response is February 4, 2022.

Yours very truly,

Julian Heller

JULIAN HELLER
JH/der
c.c. Eric Gillespie – egillespie@gillespielaw.ca

P:\JHeller\G\Goldy, Faith\Correspondence\Molson.01.docx

Diane Ross

From: William Molson <william@molsonca.com>
Sent: Tuesday, January 25, 2022 4:30 PM
To: Diane Ross
Cc: Eric K. Gillespie; Julian Heller
Subject: Re: Faith Goldy - City of Toronto Compliance Audit

Dear Mr. Heller

With reference to your letter of January 21, 2022 please be advised that the materials you have requested are the property of the City of Toronto and accordingly I would ask that you direct your request to the City.

Regarding your concerns as described in the second and third paragraphs, I believe that section 4 and Appendix A of the report, provide support for the figures provided in section 1 and hence I would hope are sufficient to address these concerns.

Yours truly
William Molson CPA
Licensed Public Accountant
2333 Queen Street East
Toronto ON M4E 1H1
william@molsoncpa.com
416 930 1651

On Jan 21, 2022, at 2:25 PM, Diane Ross <DRoss@julianheller.com> wrote:

Please find attached correspondence from Mr. Heller, Ms. Goldy's counsel, with respect to the City of Toronto Compliance Audit.

Diane E. Ross
Law Clerk to Julian Heller

Julian Heller and Associates
120 Adelaide St. W., Ste. 2501
Toronto, ON M5H 1T1
Tel: 416-364-2404
Fax: 416-364-0793
www.julianheller.com

Diane Ross

From: Julian Heller
Sent: Tuesday, January 25, 2022 6:15 PM
To: William Molson; Diane Ross
Cc: Eric K. Gillespie
Subject: RE: Faith Goldy - City of Toronto Compliance Audit

Dear Mr Molson,

Thank you for your response .
I do not agree about whose property it is, but please get the City's permission forthwith and provide me with the documents .
As well, please provide me with the contact person at the City to whom any request should be made.
In the meantime, please ensure your entire file is available to be transmitted once we clear through these issues.

Julian Heller

Julian Heller and Associates
120 Adelaide St. W., Ste. 2501
Toronto, ON M5H 1T1
Tel: 416-364-2404
Fax: 416-364-0793
Email: jheller@julianheller.com
www.julianheller.com

From: William Molson <william@molsonca.com>
Sent: Tuesday, January 25, 2022 4:30 PM
To: Diane Ross <DRoss@julianheller.com>
Cc: Eric K. Gillespie <egillespie@gillespielaw.ca>; Julian Heller <JHeller@julianheller.com>
Subject: Re: Faith Goldy - City of Toronto Compliance Audit

Dear Mr. Heller

With reference to your letter of January 21, 2022 please be advised that the materials you have requested are the property of the City of Toronto and accordingly I would ask that you direct your request to the City.

Regarding your concerns as described in the second and third paragraphs, I believe that section 4 and Appendix A of the report, provide support for the figures provided in section 1 and hence I would hope are sufficient to address these concerns.

Yours truly
William Molson CPA

Licensed Public Accountant
2333 Queen Street East
Toronto ON M4E 1H1
william@molsoncpa.com
416 930 1651

On Jan 21, 2022, at 2:25 PM, Diane Ross <DRoss@julianheller.com> wrote:

Please find attached correspondence from Mr. Heller, Ms. Goldy's counsel, with respect to the City of Toronto Compliance Audit.

Diane E. Ross
Law Clerk to Julian Heller

Julian Heller and Associates
120 Adelaide St. W., Ste. 2501
Toronto, ON M5H 1T1
Tel: 416-364-2404
Fax: 416-364-0793
www.julianheller.com

<Molson.01.pdf>

Julian Heller and Associates
Lawyers

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VIA EMAIL

January 27, 2022

City of Toronto – Compliance Audit Committee
City Hall, 10th Floor West
100 Queen Street West
Toronto, ON M5H 2N2

Attention: John D. Elvidge
Julie Amoroso

Dear Sir and Madam:

RE: Faith Goldy - City of Toronto Compliance Audit
File No.52722

I am counsel to candidate Faith Goldy.

William Molson, CPA has prepared a report with respect to Ms. Goldy's 2018 mayoral campaign in the City of Toronto, which is to be addressed at an upcoming meeting of the Compliance Audit Committee on February 8, 2022. I have asked Mr. Molson to provide me with copies of documents in his file, both upon which he relies and all other documents which he obtained in the course of his investigation and preparation of his audit report. Mr. Molson has declined to produce these on the basis that these constitute the "property" of the City of Toronto. I enclose a copy of the correspondence with Mr. Molson in this regard.

Please provide your consent to Mr. Molson to disclose all of the requested documents, and direct him to provide these to my office forthwith. As I am sure you can appreciate, it would be unfair to Ms. Goldy to require her to respond without having all the documentation in the possession of the auditor.

I understand that the deadline for Ms. Goldy to make written submissions is February 4. In the circumstances, I trust that this will receive your immediate attention. Please confirm receipt of this correspondence right away.

Yours very truly,

Julian Heller

JULIAN HELLER
JH/der
Enclosure
c.c. William Molson - william@molsonca.com
c.c. Eric Gillespie – egillespie@gillespielaw.ca

P:\JHeller\G\Goldy, Faith\Correspondence\Compliance Audit.01.docx

TORONTO

City Clerk's Office

City Hall, 13th Floor, West
100 Queen Street West
Toronto, Ontario M5H 2N2

John D. Elvidge
City Clerk

Tel: 416-392-8641
Fax: 416-392-4900
Email: clerk@toronto.ca
Web: www.toronto.ca

January 28, 2022

Julian Heller
Julian Heller and Associates
120 Adelaide St. W., Ste. 2501
Toronto, ON M5H 1T1

Via email: JHeller@julianheller.com

Dear Julian Heller,

We are in receipt of your letter dated January 27, 2022.

Subsections 88.33(12) to (14) of the *Municipal Elections Act, 1996* ("Act") set out the obligations of the auditor appointed to conduct a compliance audit:

> (12) The auditor shall promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of this Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate.
>
> (13) The auditor shall submit the report to the candidate, the clerk with whom the candidate filed his or her nomination, the secretary of the local board, if applicable, and the applicant. 2016, c. 15, s. 63.
>
> (14) Within 10 days after receiving the report, the clerk of the municipality or the secretary of the local board shall forward the report to the compliance audit committee.

Furthermore, subsection 88.33(17) states that:

> (17) The committee shall consider the report within 30 days after receiving it and, if the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, the committee shall decide whether to commence a legal proceeding against the candidate for the apparent contravention.

It is the City Clerk's position that the auditor has complied with the requirements of the Act in providing you with a copy of the auditor's report. Additionally, it is our understanding that the Compliance Audit Committee ("Committee") will receive and consider the report and determine whether to commence a legal proceeding against the candidate if the report concludes that the candidate appears to have contravened a provision of the Act, as set out in subsection 88.33(17) of the Act. In doing so, the Committee need not weigh the evidence relied upon in the preparation of the report. The weighing of the evidence and strict proof thereof is something that will occur if the Committee decides to commence a legal proceeding against the candidate.

Consequently, at this stage there is no obligation to provide to you the documents you have requested. However, as a courtesy to you and the Applicant, we have requested that the auditor provide to you, the Applicant, the Committee and the Clerk copies of bank statements and payment records relied upon in the report. We note that these records appear to be your client's records, which your client could provide to you, but again as a courtesy we have requested the auditor to provide these documents.

We also note with respect to your specific request in paragraph two of your letter to William Molson CPA dated January 21, 2022, that the auditor has called your attention to section 4 and Appendix A of the report.

Yours truly,

John D. Elvidge
City Clerk

CC: Diane E. Ross, Law Clerk to Julian Heller, DRoss@julianheller.com
Evan Balgord, info@antihate.ca
William Molson, william@molsonca.com
Jack Siegel, jsiegel@blaney.com

TAB 9

Faith Goldy Re City of Toronto Compliance Audit Summary

SUMMARY:

	July 27, 2018 - Dec 31, 2018	Jan 1, 2019 - Feb 1, 2019	Feb 2, 2019 - Mar 31, 2019	Total
Deposits	34,561.75	2,708.75	1,637.01	38,907.51
Stripe	34,181.30	3,426.29	2,525.96	40,133.55
	68,743.05	6,135.04	4,162.97	79,041.06
Per Mr. Molson	71,577.94	13,979.83	15,560.23	101,118.00
Difference	(2,834.89)	(7,844.79)	(11,397.26)	(22,076.94)

Reported on T1 return:

2018	2019	Total	
36,142.74	14,702.94	50,845.68	Gross
(4,158.01)	(1,029.79)	(5,187.80)	GST/HST
31,984.73	13,673.15	45,657.88	Net

Reconciliation of 2018 T1 to Cash Summary:

36,142.74	Gross cash received by Stripe
(1,354.14)	Less: Stripe processing fees
34,788.60	Net cash deposited in bank
(607.30)	Less: Cash rec'd Dec end 2018 but deposited in Jan 2019
34,181.30	

TAB 10

Gmail label:donations-transfers-awaiting-confirmation

Mail

- Sent
- Drafts 11
- Daily Courage 740
- Donations
  - Can't Confirm e-Trans...
  - Confirmed e-Transfers
  - e-Transfer Donat... 12
  - Expenses
  - Ineligible/No Contact
  - NB Donations
  - Transfers Awaiting C...
- Drivers
  - Confirmed
- Lawn Signs
- NB Feedback
- NB New Additions
- NB Petition
- Notes
- Nov 10 RSVP
- Pictures Videos
- Tickets Pool
- Trello 4
- Volunteers
  - NB Volunteers
  - Other Volunteers 6
- Voter ID

Donation

Donations/Transfers Awaiting Confirmation

Faith Goldy <faithfortoronto@gmail.com>
to sandi.bauer

Hello and thank you for your support!

We appreciate your contribution to our campaign more than you know.

According to Toronto Elections by-laws, we are required to confirm your Ontario address to coincide with your legal donation.

Are you able to provide proof of Ontario residency by providing us with your address and full contact info?

We assure you that your information is for our private financial records only.

If you have any other questions or concerns, please contact us at faithfortoronto@gmail.com

Thank you again for your support and hope to see you on election day – Oct. 22nd!

Blessings,
Faith

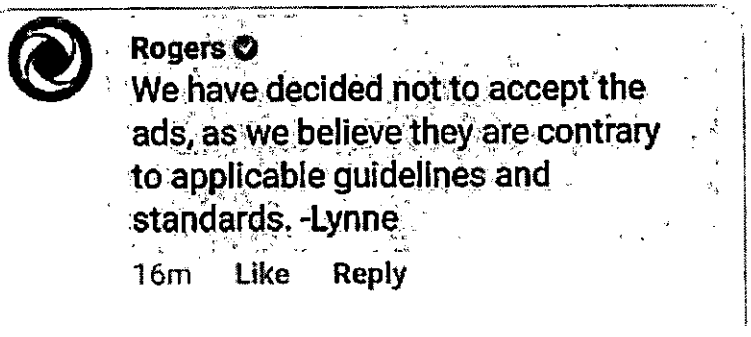
Email: FaithForToronto@gmail.com
Twitter: @FaithGoldy
Facebook: www.facebook.com/Faith.Goldy
Instagram: @FaithGoldy
~ Faith Goldy's Campaign Team

Reply Forward

TAB 11

Canadian Anti-Hate Network @antihateca · Oct 14, 2018 •••

BREAKING: Rogers Media says they won't run ads by **Faith Goldy**, a prominent alt-right figure who associates with neo-Nazism. Thank you to everybody that joined our campaign and reached out to Rogers - and thank you Rogers for making the principled decision.



Canadian Anti-Hate Ne... · 2019-04-29 ···

Replying to @antihateca

So yes, this is a victory. For those of you keeping score at home, it's 3-0. We prevented **Goldy** from airing ads, causing her to waste $93,000 in a failed lawsuit, she credits us for being banned from Facebook, and now she's facing a compliance audit.

19 48 269

Show this thread

Canadian Anti-Hate Net... · 2022-01-12 ···

BREAKING: In 2019, we filed a complaint because we caught Faith Goldy, self-proclaimed "propagandist" for the alt-right neo-Nazi movement, breaking campaign finance rules while running to be Mayor of Toronto. We were right. The auditor's report is scathing. #TOpoli

← **Thread**

Canadian Anti-Hate Network
@antihateca

This was never about politics or money, as Faith Goldy claimed during the 2019 audit hearing. It was, and is, about countering neo-Nazis whenever and wherever they try to take up public space.
4/

11:59 AM · Jan 19, 2022 · Twitter Web App

2 Retweets **36** Likes

Canadian Anti-Hate Network @antihateca · Jan 12

And if you want to help us celebrate this win, there's no better time to donate. A generous anonymous donor is matching your gifts until the end of January so that we can launch an anti-hate education program in schools.

Municipal Election Compliance Audit of the Campaign Finances of Candidate Faith Goldy

Faith Goldy Response to William Molson CPA Report dated January 12, 2022

For Compliance Audit Committee meeting February 8, 2022 at 2p.m.

BRIEF OF AUTHORITIES

Date: February 4, 2022

JULIAN HELLER AND ASSOCIATES
Lawyers
120 Adelaide Street West,
Suite 2501
Toronto, Ontario
M5H 1T1

Julian Heller LSO#25377P
Email: jheller@julianheller.com
Phone 416-364-2404
Fax 416-364-0793
Lawyer for Faith Goldy

TO: **CITY OF TORONTO**
Compliance Audit Committee
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Municipal Election Compliance Audit of the Campaign Finances of Candidate Faith Goldy

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BRIEF OF AUTHORITIES INDEX

TAB 1

SUPREME COURT OF CANADA

CITATION: Toronto (City) *v.* Ontario (Attorney General), 2021 SCC 34

APPEAL HEARD: March 16, 2021
JUDGMENT RENDERED: October 1, 2021
DOCKET: 38921

BETWEEN:

City of Toronto
Appellant

and

Attorney General of Ontario
Respondent

- and -

Attorney General of Canada, Attorney General of British Columbia, Toronto District School Board, Cityplace Residents' Association, Canadian Constitution Foundation, International Commission of Jurists (Canada), Federation of Canadian Municipalities, Durham Community Legal Clinic, Centre for Free Expression at Ryerson University, Canadian Civil Liberties Association, Art Eggleton, Barbara Hall, David Miller, John Sewell, David Asper Centre for Constitutional Rights, Progress Toronto, Métis Nation of Ontario, Métis Nation of Alberta and Fair Voting British Columbia
Interveners

CORAM: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin and Kasirer JJ.

JOINT REASONS FOR JUDGMENT: (paras. 1 to 85) — Wagner C.J. and Brown J. (Moldaver, Côté and Rowe JJ. concurring)

DISSENTING REASONS: (paras. 86 to 186) — Abella J. (Karakatsanis, Martin and Kasirer JJ. concurring)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

City of Toronto — *Appellant*

v.

Attorney General of Ontario — *Respondent*

and

Attorney General of Canada,
Attorney General of British Columbia,
Toronto District School Board,
Cityplace Residents' Association,
Canadian Constitution Foundation,
International Commission of Jurists (Canada),
Federation of Canadian Municipalities,
Durham Community Legal Clinic,
Centre for Free Expression at Ryerson University,
Canadian Civil Liberties Association,
Art Eggleton,
Barbara Hall,
David Miller,
John Sewell,
David Asper Centre for Constitutional Rights,
Progress Toronto,
Métis Nation of Ontario,
Métis Nation of Alberta and
Fair Voting British Columbia *Interveners*

Indexed as: Toronto (City) *v.* Ontario (Attorney General)

2021 SCC 34

File No.: 38921.

2021: March 16; 2021: October 1.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Constitutional law — Charter of Rights — Freedom of expression —Municipal elections — Province enacting legislation redrawing municipality's electoral ward boundaries and reducing number of wards during election campaign — Whether legislation limits electoral participants' right to freedom of expression and, if so, whether limitation justified — Canadian Charter of Rights and Freedoms, ss. 1, 2(b) — Better Local Government Act, 2018, S.O. 2018, c. 11.

Constitutional law — Unwritten constitutional principles — Democracy — Province enacting legislation redrawing municipality's electoral ward boundaries and reducing number of wards during election campaign — Whether legislation unconstitutional for violating unwritten constitutional principle of democracy.

On May 1, 2018, the City of Toronto municipal election campaign commenced and nominations opened in preparation for an election day on October 22, 2018. On July 27, 2018, the closing day for nominations, Ontario announced its intention to introduce legislation reducing the size of Toronto City Council. On August 14, 2018, the *Better Local Government Act, 2018*, came into force, reducing the number of wards from 47 to 25.

The City and two groups of private individuals challenged the constitutionality of the *Act* and applied for orders restoring the 47-ward structure. The application judge found that the *Act* limited the municipal candidates' right to freedom of expression under s. 2(b) of the *Charter* and municipal voters' s. 2(b) right to effective representation. He held that these limits could not be justified under s. 1 of the *Charter* and set aside the impugned provisions of the *Act*. Ontario appealed and moved to stay the judgment pending appeal. The Court of Appeal granted the stay and, on October 22, 2018, the municipal election proceeded on the basis of the 25-ward structure created by the *Act*. The Court of Appeal later allowed the appeal, finding no limit on freedom of expression. The majority held that the City had advanced a positive rights claim, which was not properly grounded in s. 2(b) of the *Charter*, and concluded that the application judge had erred in finding that the *Act* substantially interfered with the candidates' freedom of expression and in finding that the right to effective representation applies to municipal elections and bears any influence over the s. 2(b) analysis. The majority also held that unwritten constitutional principles do not confer upon the judiciary power to invalidate legislation that does not otherwise infringe the *Charter*, nor do they limit provincial legislative authority over municipal institutions.

Held (Abella, Karakatsanis, Martin and Kasirer JJ. dissenting): The appeal should be dismissed.

Per Wagner C.J. and Moldaver, Côté, Brown and Rowe JJ.: Ontario acted constitutionally. The *Act* imposed no limit on freedom of expression. Further, unwritten constitutional principles cannot be used as bases for invalidating legislation, nor can the unwritten constitutional principle of democracy be used to narrow provincial authority under s. 92(8) of the *Constitution Act, 1867*, or to read municipalities into s. 3 of the *Charter*.

A purposive interpretation of *Charter* rights must begin with, and be rooted in, the text and not overshoot the purpose of the right but place it in its appropriate linguistic, philosophic and historical contexts. Section 2(b) of the *Charter*,

which provides that everyone has the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication, has been interpreted as generally imposing a negative obligation rather than a positive obligation of protection or assistance. A claim is properly characterized as negative where the claimant seeks freedom from government legislation or action suppressing an expressive activity in which people would otherwise be free to engage. Such claims of right under s. 2(b) are considered under the framework established in *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927.

However, as explained in *Baier v. Alberta*, 2007 SCC 31, [2007] 2 S.C.R. 673, s. 2(b) may, in certain circumstances, impose positive obligations on the government to facilitate expression. Many constitutional rights have both positive and negative dimensions and this is so for s. 2(b). Central to whether s. 2(b) has been limited is, therefore, the appropriate characterization of the claim as between a negative and positive claim of right.

In the context of positive claims under s. 2(b), where a claimant seeks to impose an obligation on the government (or legislature) to provide access to a particular statutory or regulatory platform for expression, the applicable framework is that of *Baier*. As held in *Baier*, to succeed, a positive claim must satisfy the following three factors first set forth in *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016: (1) the claim should be grounded in freedom of expression, rather than in access to a particular statutory regime; (2) the claimant must demonstrate that lack of access to a statutory regime has the effect of a substantial interference with freedom of expression, or has the purpose of infringing freedom of expression; and (3) the government must be responsible for the inability to exercise the fundamental freedom. These factors set an elevated threshold for positive claims and can usefully be distilled to a single core question: is the claim grounded in the fundamental *Charter* freedom of expression, such that, by denying access to a statutory platform or by otherwise failing to act, the government has either substantially interfered with freedom of expression, or had the purpose of interfering with freedom of expression? This single question, a salutary clarification of the *Baier* test, emphasizes the elevated threshold in the second *Dunmore* factor while encompassing the considerations of the first and third factors. Substantial interference with freedom of expression occurs where lack of access to a statutory platform has the effect of radically frustrating expression to such an extent that meaningful expression is effectively precluded. While meaningful expression need not be rendered absolutely impossible, effective preclusion represents an exceedingly high bar that would be met only in extreme and rare cases.

In the present case, the City has not established a limit on s. 2(b). The City's claim is a claim for access to a particular statutory platform, and is thus, in substance, a positive claim. The *Baier* framework therefore applies, and the City had to show that the *Act* radically frustrated the expression of election participants such that meaningful expression was effectively precluded. The candidates and their supporters had 69 days to re-orient their messages and freely express themselves according to the new ward structure. The *Act* imposed no restrictions on the content or meaning of the messages that participants could convey. Many of the challengers who continued to campaign ultimately had successful campaigns, raising significant amounts of money and receiving significant numbers of votes. This would not have been possible had their s. 2(b) rights been so radically frustrated so as to effectively preclude meaningful expression. Some of the candidates' prior expression may have lost its relevance, but something more than diminished effectiveness is required under the *Baier* framework. In the context of a positive claim, only extreme government action that extinguishes the effectiveness of expression may rise to the level of a substantial interference with freedom of expression. Section 2(b) is not a guarantee of the effectiveness or continued relevance of a message, or that campaign materials otherwise retain their usefulness throughout the campaign.

Furthermore, the unwritten constitutional principle of democracy cannot be used as a device for invalidating otherwise valid provincial legislation such as the impugned provisions of the *Act*. Unwritten principles are part of the law of the Constitution, in the sense that they form part of the context and backdrop to the Constitution's written terms. Their legal force lies in their representation of general principles within which the constitutional order operates and, therefore, by which the Constitution's written terms — its provisions — are to be given effect. In practical terms, unwritten constitutional principles may assist courts in only two distinct but related ways.

First, they may be used in the interpretation of constitutional provisions. Where the constitutional text is not itself sufficiently definitive or comprehensive to furnish the answer to a constitutional question, a court may use unwritten constitutional principles as interpretive aids. When applied to *Charter* rights, unwritten principles assist with purposive interpretation, informing the character and the larger objects of the *Charter* itself, the language chosen to articulate the specific right or freedom, and the historical origins of the concepts enshrined. Where unwritten constitutional principles are used as interpretive aids, their substantive legal force must arise by necessary implication from the Constitution's text. Secondly, and relatedly, unwritten principles can be used to develop structural doctrines unstated in the written Constitution *per se*, but necessary to the coherence of, and flowing by implication from, its architecture. Structural doctrines can fill gaps and address important questions on which the text of the Constitution is silent.

Neither of these functions support the application of unwritten constitutional principles as an independent basis for invalidating legislation. On the contrary, unwritten constitutional principles, such as democracy, a principle by which the Constitution is to be understood and interpreted, strongly favour upholding the validity of legislation that conforms to the text of the Constitution. Subject to the *Charter*, a province, under s. 92(8) of the *Constitution Act, 1867*, has absolute and unfettered legal power to legislate with respect to municipalities. This plenary jurisdiction is unrestricted by any constitutional principle.

As for s. 3 of the *Charter*, it guarantees citizens the right to vote and run for office in provincial and federal elections, and includes a right to effective representation. The text of s. 3 makes clear, however, that it does not extend to municipal elections. Effective representation is not a principle of s. 2(b) of the *Charter*, nor can the concept be imported wholesale into s. 2(b). Section 3 and its requirement of effective representation also cannot be made relevant to the current case by using the democratic principle. Section 3 democratic rights were not extended to candidates or electors to municipal councils. The absence of municipalities in the constitutional text is not a gap to be addressed judicially; rather, it is a deliberate omission. The text of the Constitution makes clear that municipal institutions lack constitutional status, leaving no open question of constitutional interpretation to be addressed and, accordingly, no role to be played by the unwritten principles.

Per **Abella**, Karakatsanis, Martin and Kasirer JJ. (dissenting): The appeal should be allowed and the application judge's declaration that the timing of the *Act* unjustifiably infringed s. 2(b) of the *Charter* restored. Changing the municipal wards in the middle of an ongoing municipal election was unconstitutional.

When a democratic election takes place in Canada, including a municipal election, freedom of expression protects the rights of candidates and voters to meaningfully express their views and engage in reciprocal political discourse on the path to voting day. That is at the core of political expression, which in turn is at the core of what is protected by s. 2(b) of the *Charter*. The right to disseminate and receive information connected with elections has long been recognized as integral to the democratic principles underlying freedom of expression, and as a result, has attracted robust protection.

A stable election period is crucial to electoral fairness and meaningful political discourse. As such, state interference with individual and collective political expression in the context of an election strikes at the heart of the democratic values that freedom of expression seeks to protect, including participation in social and political decision-making.

A two-part test for adjudicating freedom of expression claims was established in *Irwin Toy*. The first asks whether the activity is within the sphere of conduct protected by freedom of expression. If the activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of the guarantee. The second asks whether the government action, in purpose or effect, interfered with freedom of expression.

The legal framework set out in *Baier*, which was designed to address under inclusive statutory regimes, only applies to claims placing an obligation on government to provide individuals with a particular platform for expression. Claims of government interference with expressive rights that attach to an electoral process are the kind of claims governed by the *Irwin Toy* framework.

The distinction between positive and negative rights is an unhelpful lens for adjudicating *Charter* claims. All rights have positive dimensions since they exist within, and are enforced by, a positive state apparatus. They also have negative dimensions because they sometimes require the state not to intervene. A unified purposive approach has been adopted to rights claims, whether the claim is about freedom from government interference in order to exercise a right, or the right to governmental action in order to get access to it. The threshold does not vary with the nature of the claim to a right. Each right has its own definitional scope and is subject to the proportionality analysis under s. 1 of the *Charter*. There is therefore no reason to superimpose onto the constitutional structure the additional hurdle of dividing rights into positive and negative ones for analytic purposes.

In the present case, the s. 2(b) claim is about government interference with the expressive rights that attach to the electoral process and it is precisely the kind of claim that is governed by the *Irwin Toy* framework. Applying that framework, it is clear that the timing of the legislation, by interfering with political discourse in the middle of an election, violated s. 2(b) of the *Charter*. By radically redrawing electoral boundaries during an active election that was almost two-thirds complete, the legislation interfered with the rights of all participants in the electoral process to engage in meaningful reciprocal political discourse. The *Act* eradicated nearly half of the active election campaigns, and required candidates to file a change of ward notification form to continue in the race. The redrawing of ward boundaries meant that candidates needed to reach new voters with new priorities. Voters who had received campaign information, learned about candidates' mandates and engaged with them based on the 47-ward structure had their democratic participation put into abeyance. The timing of the *Act* breathed instability into the election, undermining the ability of candidates and voters in their wards to meaningfully discuss and inform one another of their views on matters of local concern.

The limitation on s. 2(b) rights in this case was the *timing* of the legislative changes. Ontario offered no explanation, let alone a pressing and substantial one, for why the changes were made in the middle of an ongoing election. In the absence of any evidence or explanation for the timing of the *Act*, no pressing and substantial objective exists for this limitation and it cannot, therefore, be justified in a free and democratic society.

As for the role of unwritten constitutional principles, there is disagreement with the majority's observations circumscribing their scope and power in a way that reads down the Court's binding jurisprudence. Unwritten constitutional principles may be used to invalidate legislation. The precedential Constitution of the United Kingdom is not a written document, but is comprised of unwritten norms, Acts of Parliament, Crown prerogative, conventions, custom of Parliament, and judicial decisions, among other sources. Canada's Constitution, as a result, embraces unwritten as well as written rules. Unwritten constitutional principles have been held to be the lifeblood of the Constitution and the vital unstated assumptions upon which the text is based. They are not merely "context" or "backdrop" to the text. On the contrary, they are the Constitution's most basic normative commitments from which specific textual provisions derive. The specific written provisions are elaborations of the underlying, unwritten, and organizing principles found in the preamble to the *Constitution Act, 1867*. Constitutional text emanates from underlying principles, but it will not always be exhaustive of those principles.

Apart from written provisions of the Constitution, principles deriving from the Constitution's basic structure may constrain government action. Those principles exist independently of and, as in the case of implied fundamental rights before the promulgation of the *Charter*, prior to the enactment of express constitutional provisions. The legislative bodies in Canada must conform to these basic structural imperatives and can in no way override them. Accordingly, unwritten principles may be used to invalidate legislation if a case arises where legislation elides the reach of any express constitutional provision but is fundamentally at odds with the Constitution's internal architecture or basic constitutional structure. This would undoubtedly be a rare case; however, to foreclose the possibility that unwritten principles can be used to invalidate legislation in all circumstances is imprudent. It not only contradicts the Court's jurisprudence, it is fundamentally inconsistent with the case law confirming that unwritten constitutional principles can be used to review legislation for constitutional compliance. Reviewing legislation for constitutional compliance means upholding, revising or rejecting it.

Unwritten constitutional principles are the foundational organizing principles of the Constitution and have full legal force. They serve to give effect to the structure of the Constitution and function as independent bases upon which to attack the validity of legislation since they have the same legal status as the text. Unwritten constitutional principles not only give meaning and effect to constitutional text and inform the language chosen to articulate the specific right or freedom, they assist in developing an evolutionary understanding of the rights and freedoms guaranteed in the Constitution, which have long been described as a living tree capable of growth and expansion. Unwritten constitutional principles are a key part of what makes the tree grow. They are also substantive legal rules in their own right. In appropriate cases, they may well continue to serve, as they have done in the past, as the basis for declaring legislation unconstitutional.

By Wagner C.J. and Brown J.

Applied: *Baier v. Alberta*, 2007 SCC 31, [2007] 2 S.C.R. 673; **distinguished:** *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927; **considered:** *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, 1997 CanLII 317 (SCC), [1997] 3 S.C.R. 3; *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31; *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [2002] 3 S.C.R. 3; **referred to:** *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 45, [2000] 2 S.C.R. 409; *Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General)*, 2001 SCC 15, [2001] 1 S.C.R. 470; *Ontario Public School Boards' Assn. v. Ontario (Attorney General)* (1997), 1997 CanLII 12352 (ON SC), 151 D.L.R. (4th) 346; *East York (Borough) v. Ontario* (1997), 1997 CanLII 1316 (ON CA), 36 O.R. (3d) 733; *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016; *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32; *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295; *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712; *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141; *Haig v. Canada*, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995; *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, [2009] 2 S.C.R. 295; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, [2015] 1 S.C.R. 3; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815; *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827; *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 S.C.R. 569; *Thomson Newspapers Co. v. Canada (Attorney General)*, 1998 CanLII 829 (SCC), [1998] 1 S.C.R. 877; *Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 S.C.R. 158; *Reference re Resolution to Amend the Constitution*, 1981 CanLII 25 (SCC), [1981] 1 S.C.R. 753; *MacMillan Bloedel Ltd. v. Simpson*, 1995 CanLII 57 (SCC), [1995] 4 S.C.R. 725; *R. (on the application of Miller) v. Prime Minister*, [2019] UKSC 41, [2020] A.C. 373; *OPSEU v. Ontario (Attorney General)*, 1987 CanLII 71 (SCC), [1987] 2 S.C.R. 2; *R. v. Poulin*, 2019 SCC 47; *Morguard Investments Ltd. v. De Savoye*, 1990 CanLII 29 (SCC), [1990] 3 S.C.R. 1077; *Hunt v. T&N plc*, 1993 CanLII 43 (SCC), [1993] 4 S.C.R. 289; *Huson v. The Township of South Norwich* (1895), 1895 CanLII 1 (SCC), 24 S.C.R. 145; *Reference re Manitoba Language Rights*, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511; *Guerin v. The Queen*, 1984 CanLII 25 (SCC), [1984] 2 S.C.R. 335; *Reference re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313; *B.C.G.E.U. v. British Columbia (Attorney General)*, 1988 CanLII 3 (SCC), [1988] 2 S.C.R. 214; *Reference re Alberta Statutes*, 1938 CanLII 1 (SCC), [1938] S.C.R. 100; *Switzman v. Elbling*, 1957 CanLII 2 (SCC), [1957] S.C.R. 285.

By Abella J. (dissenting)

Di Ciano v. Toronto (City), 2017 CanLII 85757; *Natale v. City of Toronto*, 2018 ONSC 1475, 1 O.M.T.R. 349; *Godbout v. Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 S.C.R. 844; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241; *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13, [2000] 1 S.C.R. 342; *Shell Canada Products Ltd. v. Vancouver (City)*, 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231; *Reference re Alberta Statutes*, 1938 CanLII 1 (SCC), [1938] S.C.R. 100; *Switzman v. Elbling*, 1957 CanLII 2 (SCC), [1957] S.C.R. 285; *RWDSU v. Dolphin Delivery Ltd.*, 1986 CanLII 5 (SCC), [1986] 2 S.C.R. 573; *R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45; *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712; *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927; *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697; *Edmonton Journal v. Alberta (Attorney General)*, 1989 CanLII 20 (SCC), [1989] 2 S.C.R. 1326; *Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835; *Thomson Newspapers Co. v. Canada (Attorney General)*, 1998 CanLII 829 (SCC), [1998] 1 S.C.R. 877; *R. v. Bryan*, 2007 SCC 12, [2007] 1 S.C.R. 527; *R. v. Butler*, 1992 CanLII 124 (SCC), [1992] 1 S.C.R. 452; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69, [2000] 2 S.C.R. 1120; *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, [2009] 2 S.C.R. 295; *Devine v. Quebec (Attorney General)*, 1988 CanLII 20 (SCC), [1988] 2 S.C.R. 790; *Committee for the Commonwealth of Canada v. Canada*, 1991 CanLII 119 (SCC), [1991] 1 S.C.R. 139; *Ramsden v. Peterborough (City)*, 1993 CanLII 60 (SCC), [1993] 2 S.C.R. 1084; *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141; *Haig v. Canada*, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995; *Native Women's Assn. of Canada v. Canada*, 1994 CanLII 27 (SCC), [1994] 3 S.C.R. 627; *Baier v. Alberta*, 2007 SCC 31, [2007] 2 S.C.R. 673; *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038; *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 S.C.R. 199; *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 S.C.R. 610; *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 S.C.R. 569; *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, 1996 CanLII 184 (SCC), [1996] 3 S.C.R. 480; *Vancouver Sun (Re)*, 2004 SCC 43, [2004] 2 S.C.R. 332; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815; *Kleindienst v. Mandel*, 408 U.S. 753 (1972); *B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, 2017 SCC 6, [2017] 1 S.C.R. 93; *Delisle v. Canada (Deputy Attorney General)*, 1999 CanLII 649 (SCC), [1999] 2 S.C.R. 989; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, [2015] 1 S.C.R. 3; *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016; *Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3; *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331; *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 S.C.R. 30; *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134; *Eldridge v. British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 S.C.R. 624; *Vriend v. Alberta*, 1998 CanLII 816 (SCC), [1998] 1 S.C.R. 493; *Fraser v. Canada (Attorney General)*, 2020 SCC 28; *Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 S.C.R. 158; *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, 1997 CanLII 317 (SCC), [1997] 3 S.C.R. 3; *R. (on the application of Miller) v. Prime Minister*, [2019] UKSC 41, [2020] A.C. 373; *R. (on the application of Jackson) v. Attorney General*, [2005] UKHL 56, [2006] 1 A.C. 262; *R. (Privacy International) v. Investigatory Powers Tribunal*, [2019] UKSC 22, [2020] A.C. 491; *AXA General Insurance Ltd. v. HM Advocate*, [2011] UKSC 46, [2012] 1 A.C. 868; *Brandy v. Human Rights and Equal Opportunity Commission* (1995), 183 C.L.R. 245; *Kable v.*

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APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Tulloch, Miller, Nordheimer and Harvison Young JJ.A.), 2019 ONCA 732, 146 O.R. (3d) 705, 439 D.L.R. (4th) 292, 442 C.R.R. (2d) 348, 92 M.P.L.R. (5th) 1, [2019] O.J. No. 4741 (QL), 2019 CarswellOnt 14847 (WL Can.), setting aside a decision of Belobaba J., 2018 ONSC 5151, 142 O.R. (3d) 336, 416 C.R.R. (2d) 132, 80 M.P.L.R. (5th) 1, [2018] O.J. No. 4596 (QL), 2018 CarswellOnt 14928 (WL Can.). Appeal dismissed, Abella, Karakatsanis, Martin and Kasirer JJ. dissenting.

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The judgment of Wagner C.J. and Moldaver, Côté, Brown and Rowe JJ. was delivered by

THE CHIEF JUSTICE AND BROWN J. —

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I. Introduction

[1] While cast as a claim of right under s. 2(b) of the *Canadian Charter of Rights and Freedoms*, this appeal, fundamentally, concerns the exercise of provincial legislative authority over municipalities. The issue, simply put, is whether and how the Constitution of Canada restrains a provincial legislature from changing the conditions by and under which campaigns for elected municipal councils are conducted.

[2] Section 92(8) of the *Constitution Act, 1867* assigns to provinces exclusive legislative authority regarding "Municipal Institutions in the Province". Municipalities incorporated under this authority therefore hold delegated provincial powers; like school boards or other creatures of provincial statute, they do not have independent constitutional status (*Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 45, [2000] 2 S.C.R. 409, at paras. 33-34). The province has "absolute and unfettered legal power to do with them as it wills" (*Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General)*, 2001 SCC 15, [2001] 1 S.C.R. 470, at para. 58, quoting with approval Campbell J. in *Ontario*

Public School Boards' Assn. v. Ontario (Attorney General) (1997), 1997 CanLII 12352 (ON SC), 151 D.L.R. (4th) 346 (Ont. C.J. (Gen. Div.)), at p. 361). No constitutional norms or conventions prevent a province from making changes to municipal institutions without municipal consent (*East York (Borough) v. Ontario* (1997), 1997 CanLII 1316 (ON CA), 36 O.R. (3d) 733 (C.A.), at pp. 737-38, per Abella J.A.). And "it is not for this Court to create constitutional rights in respect of a third order of government where the words of the Constitution read in context do not do so" (*Baier v. Alberta*, 2007 SCC 31, [2007] 2 S.C.R. 673, at para. 39).

[3] Aside from one reference to s. 92(8) — and an acknowledgement that the Province of Ontario had constitutional authority to act as it did in this case — our colleague Abella J. all but ignores this decisive constitutional context (para. 112). And yet, these considerations loom large here. After the closing of a nomination period for elections to the Toronto City Council, the Province legislated a new, reduced ward structure for the City of Toronto and a correspondingly reduced Council. The City says that doing so was unconstitutional, because it limited the s. 2(b) *Charter* rights of electoral participants and violated the unwritten constitutional principle of democracy. It also, says the City, ran afoul of the constitutional requirements of effective representation, which it says flow from s. 2(b) of the *Charter* and s. 92(8) of the *Constitution Act, 1867* by virtue of that same unwritten constitutional principle of democracy.

[4] None of these arguments have merit, and we would dismiss the City's appeal. In our view, the Province acted constitutionally. As to the s. 2(b) claim, the City seeks access to a statutory platform which must be considered under the framework stated in *Baier*. The change to the ward structure did not prevent electoral participants from engaging in further political expression on election issues under the new ward structure in the 69 days between the *Act* coming into force and the election day. There was no substantial interference with the claimants' freedom of expression and thus no limitation of s. 2(b).

[5] Nor did the *Act* otherwise violate the Constitution. Unwritten constitutional principles cannot in themselves ground a declaration of invalidity under s. 52(1) of the *Constitution Act, 1982*, and there is no freestanding right to effective representation outside s. 3 of the *Charter*. Further, the unwritten constitutional principle of democracy cannot be used to narrow provincial authority under s. 92(8), or to read municipalities into s. 3.

II. Background

[6] In 2013, the City of Toronto engaged consultants to conduct the Toronto Ward Boundary Review of Toronto's then 44-ward structure. They recommended an expanded 47-ward structure, which the City adopted in 2016.

[7] On May 1, 2018, the City of Toronto campaign commenced and nominations opened in preparation for an election day on October 22, 2018. By the close of nominations on July 27, 2018, just over 500 candidates had registered to run in the 47 wards. That same day, the Government of Ontario announced its intention to introduce legislation reducing the size of Toronto City Council to 25 wards. On August 14, 2018, the *Better Local Government Act, 2018*, S.O. 2018, c. 11 ("*Act*"), came into force, reducing the number of wards from 47 to 25 (based on the boundaries of the federal electoral districts), and extending the nomination period to September 14.

[8] The City and two groups of private individuals applied on an urgent basis to the Ontario Superior Court of Justice challenging the constitutionality of these measures and seeking orders restoring the 47-ward structure. They argued that the *Act* breached *Charter* guarantees of freedom of expression, freedom of association, and equality, and that it violated the unwritten constitutional principles of democracy and the rule of law.

[9] The application judge agreed, finding two limits on s. 2(b) of the *Charter* (2018 ONSC 5151, 142 O.R. (3d) 336). First, he found that the *Act* limited the municipal candidates' s. 2(b) right to freedom of expression, a conclusion largely tied to the timing of the *Act*, enacted as it was during the election campaign. Secondly, he found that the *Act* limited municipal voters' s. 2(b) right to effective representation — despite the fact that effective representation is a principle of s. 3 (and not s. 2(b)) of the *Charter* — due to his conclusion that the ward population sizes brought about by the *Act* were too large to allow councillors to effectively represent their constituents. Neither of these limits could, he further held, be justified under s. 1 and he set aside the impugned provisions of the *Act*. As a result, the election was to proceed on the basis of the 47-ward system.

[10] The Province appealed and moved to stay the judgment pending appeal. The Court of Appeal for Ontario granted the stay on September 19, 2018, concluding that there was a strong likelihood that the Province's appeal would be successful and, on October 22, 2018, the Toronto municipal election proceeded on the basis of the 25-ward structure created by the *Act* (2018 ONCA 761, 142 O.R. (3d) 481). No issue is taken with the integrity of the election or the results thereof.

[11] When the Court of Appeal decided the Province's appeal on its merits, it divided. While the dissenters would have invalidated the *Act* as unjustifiably limiting freedom of expression, the majority allowed the appeal, finding no such limit (2019 ONCA 732, 146 O.R. (3d) 705). The City had advanced a positive rights claim — that is, a claim for a particular platform and not protection from state interference with the conveyance of a message. Consistent with the *Baier* framework governing such claims, the majority applied the factors stated in *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016, to conclude that the claim was not properly grounded in s. 2(b) of the *Charter*, and that the application judge had erred in finding that the *Act* substantially interfered with the candidates' freedom of expression. Further, he had erred in finding that the right to effective representation — guaranteed by s. 3 — applies to municipal elections and bears any influence over the s. 2(b) analysis. Finally, the majority held that unwritten constitutional principles do not confer upon the judiciary power to invalidate legislation that does not otherwise infringe the *Charter*; nor do they limit provincial legislative authority over municipal institutions. Though unwritten constitutional principles are sometimes used to fill gaps in the Constitution, no such gap exists here.

[12] The Court of Appeal appears to have granted the City public interest standing to argue the appeal (para. 28). The City's standing was not challenged before this Court.

III. Issues

[13] Two issues arise from the foregoing. First, did the *Act* limit (unjustifiably or at all) the freedom of expression of candidates and/or voters participating in the 2018 Toronto municipal election? And secondly, can the unwritten constitutional principle of democracy be applied, either to narrow provincial legislative authority over municipal institutions or to require effective representation in those institutions, so as to invalidate the *Act*?

IV. Analysis

A. *Freedom of Expression*

(1) Principles of *Charter* Interpretation in the Context of Section 2(b)

[14] This appeal hinges on the scope of s. 2(b) of the *Charter*, which provides that everyone has the fundamental freedoms "of thought, belief, opinion and expression, including freedom of the press and other media of communication". A purposive interpretation of *Charter* rights must begin with, and be rooted in, the text (*Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, at paras. 8-10) and not overshoot the purpose of the right but place it in its appropriate linguistic, philosophic and historical contexts (*R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295, at p. 344). Yet, it is undeniable that s. 2(b) has traditionally been interpreted expansively (*Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927, at p. 976; *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712, at pp. 765-67). Indeed, s. 2(b) has been interpreted so broadly that the framework has been criticized for setting too low a bar for establishing a s. 2(b) limitation, such that any consideration of its substantive reach and bounds is generally consigned to the limitations analysis under s. 1 (K. Chan, "Constitutionalizing the Registered Charity Regime: Reflections on *Canada Without Poverty*" (2020), 6 *C.J.C.C.L.* 151, at p. 174, citing M. Plaxton and C. Mathen, "Developments in Constitutional Law: The 2009-2010 Term" (2010), 52 *S.C.L.R.* (2d) 65). Following *Irwin Toy*, then, if an activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of "expression" (p. 969). Further, if the purpose or effect of the impugned governmental action is to control attempts to convey meaning through that activity, a limit on expressive freedom will be shown (p. 972).

[15] Freedom of expression is not, however, presently recognized as being without internal limits. Activities may fall outside the scope of s. 2(b) where the method of the activity itself — such as violence — or the location of that activity is not consonant with *Charter* protection (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at paras. 60 and 62).

[16] Further, and of particular significance to this appeal, s. 2(b) has been interpreted as "generally impos[ing] a negative obligation . . . rather than a positive obligation of protection or assistance" (*Baier*, at para. 20 (emphasis added), citing *Haig v. Canada*, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995, at p. 1035). A claim is properly characterized as negative where the claimant seeks "freedom from government legislation or action suppressing an expressive activity in which people would otherwise be free to engage" (*Baier*, at para. 35 (emphasis added)). Such claims of right under s. 2(b) are considered under this Court's *Irwin Toy* framework.

[17] In *Baier*, however, this Court explained that s. 2(b) may, in certain circumstances, impose positive obligations on the government to facilitate expression. Put differently, while s. 2(b) typically "prohibits gags", it can also, in rare and narrowly circumscribed cases, "compel the distribution of megaphones" (para. 21, quoting *Haig*, at p. 1035). Hence the Court of Appeal's statement in this case that "[f]reedom of expression is respected, in the main, if governments simply *refrain* from actions that would be an unjustified interference with it", and that positive claims under s. 2(b) may be recognized in only "exceptional and narrow" circumstances (paras. 42 and 48 (emphasis in original)).

[18] Central to whether s. 2(b) was limited by the Province here is, therefore, the appropriate characterization of the claim as between a negative and positive claim of right. In *Baier*, this Court shielded positive claims from the *Irwin Toy* framework and subjected them to an elevated threshold. This is necessary, given the ease with which claimants can typically show a limit to free expression under the *Irwin Toy* test. An elevated threshold for positive claims narrows the circumstances in which a government or legislature must legislate or otherwise act to support freedom of expression. To consider positive claims under *Irwin Toy* would be to force the government to justify, under s. 1, any decisions *not* to provide particular statutory platforms for expression.

[19] The *Baier* framework is therefore not confined, as our colleague suggests, "to address[ing] underinclusive statutory regimes" (para. 148). This Court could not have been clearer in *Baier* that it applies "where a government defending a *Charter* challenge alleges, or the *Charter* claimant concedes, that a positive rights claim is being made under s. 2(*b*)" (para. 30). Were it otherwise — that is, were *Baier*'s application limited to cases of underinclusion — claims seeking the creation or extension of a statutory platform for expression would be considered under *Baier* while claims seeking the preservation of that same platform would be considered under *Irwin Toy*. This is illogical. *Baier*'s reach extends beyond cases of underinclusion or exclusion, and categorically limits the "obligation[s] on government to provide individuals with a particular platform for expression" (*Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, [2009] 2 S.C.R. 295, at para. 35). This reflects the separation of powers; choices about whether and how to design a statutory or regulatory platform are best left to the elected orders of the state.

[20] We should not be taken as suggesting that s. 2(b) is to be understood as conferring a right that is wholly positive or wholly negative. Many constitutional rights have both positive and negative dimensions and the *Baier* framework explicitly recognizes that this is so for s. 2(b). But the distinction between those positive and negative dimensions remains important when considering the nature of *the obligation* that the claim seeks to impose upon the state: a "right's positive dimensions require government to act in certain ways, whereas its negative dimensions require government to refrain from acting in other ways" (P. Macklem, "Aboriginal Rights and State Obligations" (1997), 36 *Alta. L. Rev.* 97, at p. 101; see also A. Sen, *The Idea of Justice* (2009), at p. 282). For instance, would the claim, if accepted, require government action, or is the claim concerned with restrictions on the content or meaning of expression? And, were the claim rejected, would it deny the claimant access to a particular platform for expression on a subject, or would it preclude altogether the possibility of conveying

expression on that subject? While in *Haig*, L'Heureux-Dubé J. correctly noted that the distinction between positive and negative entitlements is "not always clearly made, nor . . . always helpful", she nevertheless distinguished typical negative claims from those that might require "positive governmental action" (p. 1039). This is the distinction with which we concern ourselves here.

[21] This appeal therefore presents an opportunity to affirm and clarify the application of *Baier* to positive claims under s. 2(b). *Baier* remains good law in the context of s. 2(b). It adopts a framework for analysis first set forth in *Dunmore*, which itself decided a claim under s. 2(d) (freedom of association). We need not decide here whether *Dunmore* remains applicable to s. 2(d) claims (an open question, given the decisions of this Court in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3, and *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, [2015] 1 S.C.R. 3). It suffices here for us to affirm *Baier* as a useful and necessary framework in the context of positive s. 2(b) claims (although, as we will explain, we would simplify the framework).

(2) The *Baier* Framework

[22] The *Baier* framework applies if a claimant seeks to impose an obligation on the government (or legislature) to provide access to a particular statutory or regulatory platform for expression (para. 30; *Greater Vancouver Transportation Authority*, at para. 35). Here, therefore, if the City's claim would require the government or legislature to enact legislation or promulgate regulations, or otherwise act to provide a particular statutory or regulatory platform, it is advancing a positive claim (*Baier*, at para. 35).

[23] In *Baier*, this Court held that, to succeed, a positive claim must satisfy the three *Dunmore* factors: (1) Is the claim grounded in freedom of expression, rather than in access to a particular statutory regime? (2) Has the claimant demonstrated that lack of access to a statutory regime has the effect of a substantial interference with freedom of expression, or has the purpose of infringing freedom of expression? (3) Is the government responsible for the inability to exercise the fundamental freedom?

[24] These factors set an elevated threshold for positive claims. The first factor asks what the claimant is really seeking — in other words, whether the claim is grounded in freedom of expression or whether it merely seeks access to a statutory regime. Likewise, the second factor — which requires that the claimant establish a *substantial* interference with freedom of expression — sets a higher threshold than that stated in *Irwin Toy*, which asks only whether "the purpose or effect of the government action in question was to restrict freedom of expression" (p. 971; see also *Baier*, at paras. 27-28 and 45).

[25] So understood, these factors can usefully be distilled to a single core question: is the claim grounded in the fundamental *Charter* freedom of expression, such that, by denying access to a statutory platform or by otherwise failing to act, the government has either substantially interfered with freedom of expression, or had the purpose of interfering with freedom of expression? This is, to be clear, a single question which emphasizes the elevated threshold in the second *Dunmore* factor while encompassing the considerations of the first and third factors. Given what we see as the significant overlap among the factors — particularly between the first and second — this is, in our view, a salutary clarification of the *Baier* test, entirely consistent with this Court's approach in *Baier* and *Greater Vancouver Transportation Authority*. To be clear, s. 2(b) does not remove the authority that a legislature has to create or modify statutory platforms, because it does not include the right to access any statutory platform in particular. However, when a legislature chooses to provide such a platform, then it must comply with the *Charter* (*Haig*, at p. 1041).

[26] If, therefore, a claimant can demonstrate that, by denying access to a statutory platform, the government has substantially interfered with freedom of expression or acted with the purpose of doing so, the claim may proceed. Despite being a positive claim, the claimant has demonstrated a limit to its s. 2(b) right, and — subject to justification of such limit under s. 1 — government action or legislation may be required.

[27] There is no suggestion here that the Province acted *with the purpose* of interfering with freedom of expression, and we therefore confine our observations here to the claim presented — that is, a claim that a law has had *the effect* of substantially interfering with freedom of expression. In our view, a substantial interference with freedom of expression occurs where lack of access to a statutory platform has the effect of radically frustrating expression to such an extent that meaningful expression is "effectively preclude[d]" (*Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815, at para. 33). While meaningful expression need not be rendered absolutely impossible, we stress that effective preclusion represents an exceedingly high bar that would be met only in extreme and rare cases (*Baier*, at para. 27; *Dunmore*, at para. 25). For example, a statutory reduction of the length of an election campaign to two days may well, as a practical matter, be shown to have the effect of constituting a substantial interference with freedom of expression. In such a case, meaningful expression may very well be found to be effectively precluded.

[28] The height of this bar of effective preclusion is demonstrated by *Baier*. There, legislation was amended to prohibit school employees from running for election as school trustees, and the Court — applying the *Dunmore* factors — concluded that no substantial interference with freedom of expression was demonstrated. The claim was grounded merely in access to a particular statutory platform governing school trusteeship, rather than a substantial interference with freedom of expression. And, in any event, there was no interference, substantial or otherwise, with the appellants' ability to express views on matters relating to the education system. Their exclusion from the statutory scheme deprived them only of one particular *means* of such expression (paras. 44 and 48).

(3) Application

(a) *Nature of the Claim*

[29] The first question to answer in deciding this appeal is whether the City advances a positive claim. There are two ways in which the City's claim can be understood. Each leads to the conclusion that the claim is, in substance, a

positive claim that must, therefore, show a substantial interference with freedom of expression.

[30] The first possible view of the City's claim is that of *restoring an earlier statutory platform*, specifically the 47-ward structure. That this is so is evident from the City's requested disposition, which asks that the next municipal election be conducted under the previous framework (A.F., at para. 152). The City, then, would have the Province act (either by enacting new legislation or repealing the impugned provisions of the *Act*) to restore the previous statutory platform. This reveals a straightforward positive claim. The fact that the City and the participants in the election had previously enjoyed access to the 47-ward structure is of no legal significance. In *Baier*, this Court viewed a claim for restoring the status quo as a positive claim, equating it with a demand to legislate a framework for the first time. Such an approach is necessary to prevent fettering; "[t]o hold otherwise would mean that once a government had created a statutory platform, it could never change or repeal it without infringing s. 2(*b*)" (para. 36).

[31] The second possible view of the City's claim is that of *maintaining an existing statutory platform*. The City frames its claim as asking the Province, once a municipal election period commences, to ensure access to whatever election platform existed at that time. In the City's view, what is otherwise political expression becomes what it calls "electoral expression" during an election period (A.F., at para. 54). Protection of this "electoral expression", it says, requires the maintenance of the particular electoral framework that was in place at the beginning of the electoral period. Framed thusly, the City's claim that the impugned provisions of the *Act* limited s. 2(b) turns squarely on the *timing* of the *Act*. Indeed, at the hearing of this appeal, the City conceded that barring any other potential issues, the Province was constitutionally permitted to enact this same legislation in the week *following* the election. Further, the City requested — in the event that this Court finds only that the timing of the *Act* was unconstitutional — a declaration to that effect, rather than a remedy that would restore the previous 47-ward structure.

[32] The City's focus on the timing of the *Act* cannot, however, convert its positive claim into a negative one. While its claim is couched in language of non-interference — something that superficially resembles a negative claim to be considered under the *Irwin Toy* framework — the City does not seek protection of electoral participants' expression from restrictions tied to content or meaning (as was the case, for example, in *Greater Vancouver Transportation Authority*); rather, it seeks a particular platform (being whatever council structure existed at the outset of the campaign) by which to channel, and around which to structure, that expression.

[33] So understood, the claim is akin to that rejected in *Baier*. The only point of distinction is that *Baier* involved a request for a specific type of legislative regime (i.e., one that permitted school employees to run for and serve as school board trustees), while the claim in this case is for temporary protection — that is, for the duration of the campaign — of whatever particular type of election structure existed at the outset of the election period. But, for the purposes of deciding constitutionality, there is no difference between the present case and a hypothetical scenario in which the Province were to scrap the ongoing election and replace it with a completely new platform with a different structure and a reasonable campaign period altogether. Here, the City is able to frame its claim only in terms of non-interference because the *Act* modified the existing structure without scrapping it. But the ultimate result is the same. The City's claim is still a claim for access to a particular statutory platform; the precise disposition requested simply depends on whatever electoral framework is in place at the outset of the election process. It is thus a positive claim. Because municipal elections are merely statutory platforms without a constitutional basis, provinces can — subject to the elevated threshold of a substantial interference — change the rules as they wish.

[34] To hold otherwise would be to contemplate an unprecedented statutory freeze on provincial jurisdiction under s. 92(8), temporarily constitutionalizing a particular statutory platform for the duration of an election. What would normally be considered a positive claim under s. 2(b) would effectively transform into a negative claim for that period of time. This is constitutionally dubious, nonsensical, and even futile since the duration of such a freeze would depend entirely on the length of the election, over which the Province itself has ultimate authority. With respect, our colleague Abella J. ignores these concerns in holding that *Irwin Toy* ought to apply to a claim such as this. Provincial authority to legislate a change to Toronto's ward structure is accepted, but on our colleague's understanding this authority is operative only some of the time (para. 112). Combined with her broad articulation of the *Irwin Toy* threshold in this context — whether legislation "destabiliz[es] the opportunity for meaningful reciprocal discourse" — such an understanding would effectively freeze legislative authority to even tangentially affect a municipal election for the duration of the campaign (para. 115). Such a freeze sits awkwardly with the plenary authority that provinces enjoy under s. 92(8) of the *Constitution Act, 1867*.

[35] In sum, the City advances a positive claim and the *Baier* framework applies.

(b) *Application of Baier*

[36] As explained above, the *Baier* framework asks whether the claimant demonstrated that, by denying access to a statutory regime, the government has substantially interfered with freedom of expression. To repeat, this is a demanding threshold, requiring the City to show that the *Act* radically frustrated the expression of election participants such that meaningful expression was effectively precluded. In our view, the City cannot do so and therefore has not established a limit on s. 2(b).

[37] Here, the candidates and their supporters had 69 days — longer than most federal and provincial election campaigns — to re-orient their messages and freely express themselves according to the new ward structure. (Our colleague Abella J. is simply incorrect to suggest, at para. 104, that only one month of the campaign remained. It was twice that.) The *Act* did not prevent candidates from engaging in further political speech under the new structure. Candidates continued to campaign vigorously, canvassing and debating about issues unrelated to the impugned provisions, the size of council or the ward boundaries. And even had they not, nothing in the *Act* prevented them from doing so. It imposed no restrictions on the content or meaning of the messages that participants could convey. Many of the challengers who continued to campaign ultimately had, by any measure, successful campaigns, raising significant amounts of money and receiving significant numbers of votes. This would not have been possible had their s. 2(b) rights been so radically frustrated so as to effectively preclude meaningful expression.

[38] It is of course likely that some of the candidates' prior expression may have lost its relevance; pamphlets or other campaign paraphernalia with an old ward designation on them, for instance, had to be revised or discarded. But, with the new ward structure — and larger ward populations — came higher campaign expenditure limits, so candidates were able to raise more funds over the 69 days they had left in the campaign. This is, therefore, a complaint that the prior expression of the candidates was no longer meaningful or helpful in their project to secure election. It is, at its root, a complaint about diminished *effectiveness*.

[39] While diminished effectiveness might be enough to amount to a limit of s. 2(b) in its traditional negative orientation — see, for instance, *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827, at para. 15, per McLachlin C.J. and Major J., dissenting in part, but not on this point, and *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 S.C.R. 569 — more is required under the *Baier* framework. In the context of a positive claim, only extreme government action that extinguishes the effectiveness of expression — for instance, instituting a two-day electoral campaign — may rise to the level of a substantial interference with freedom of expression; such an act may effectively preclude meaningful expression in the context of the election. That is simply not what happened here. Section 2(b) is not a guarantee of the effectiveness or continued relevance of a message, or that campaign materials otherwise retain their usefulness throughout the campaign.

[40] Even accepting that the change in structure diminished the effectiveness of the electoral candidates' prior political speech by rendering some of their 47-ward campaign communications less relevant, this does not rise to the level of substantial interference. Again, the campaign that took place over 69 days following the imposition of the 25-ward system was vigorously contested by candidates whose freedom of expression was clearly not radically frustrated. We acknowledge that the application judge found a substantial interference with freedom of expression (para. 32). There are, however, three problems with his finding. First, this finding was made in the context of legal error, since he erroneously applied the *Irwin Toy* framework for a negative claim. Secondly, and relatedly, the reasons of the judge make clear that this finding was tied to the diminished effectiveness of the candidates' expression, something that, as explained, is simply insufficient to show a limit on freedom of expression under the *Baier* framework. Finally, given the truncated timelines of the matter at first instance, the judge was required to make this finding on a limited factual record. With the benefit of fresh evidence adduced by the Province and admitted at this Court, it is clear that the candidates were not effectively precluded from expressing themselves in the context of the campaign. They conducted vigorous, hard-fought campaigns about the issues that mattered to them.

[41] The City says that the expression at issue here — again, what it calls "electoral expression" — is uniquely connected to, and dependent on, the framework of the election itself. Therefore, it says, the scope of s. 2(b) encompasses not only the expression itself but also the structure of the election. Put thusly, however, the claim is not dissimilar to the "unique role" of school trusteeship claimed by the appellants, and rejected by the Court, in *Baier*. Claiming a unique role or dependence on a statutory platform is not the same as claiming a fundamental freedom (*Baier*, at para. 44). Doing so is simply to seek access to that statutory platform. That is what the City seeks here.

[42] In sum, the *Baier* threshold is not met here. The *Act* imposed no limit on freedom of expression.

[43] Having found no limit to s. 2(b), we need not consider s. 1. We note, however, that our colleague Abella J. decides s. 1 against the Province on the basis that it "offered no explanation, let alone a pressing and substantial one, for why the changes were made in the middle of an ongoing election" (para. 161). This ignores the Province's written and oral submissions that the newly elected government proceeded expeditiously so as to be able to implement these changes within the time constraints of its own elected mandate, rather than wait four years until the next municipal election (R.F., at para. 149; transcript, at pp. 111-12).

(c) *Effective Representation*

[44] The City also says that the impugned provisions of the *Act* infringe "effective representation", an incident of the guarantee contained in s. 3 of the *Charter* which, the City says, can be imported into s. 2(b).

[45] Section 3 guarantees citizens the right to vote and run for office in provincial and federal elections, and includes a right to effective representation. The text of s. 3 makes clear, however, that it guarantees "only the right to vote in elections of representatives of the federal and the provincial legislative assemblies" (*Haig*, at p. 1031 (emphasis added)) and "does not extend to municipal elections" (p. 1031 (emphasis added), citing P. W. Hogg, *Constitutional Law of Canada* (3rd ed. 1992), vol. 2, at p. 42-2). Simply put, ss. 2(b) and 3 record distinct rights which must be given independent meaning (*Thomson Newspapers Co. v. Canada (Attorney General)*, 1998 CanLII 829 (SCC), [1998] 1 S.C.R. 877, at paras. 79-80; *Harper*, at para. 67). Effective representation is not a principle of s. 2(b), nor can the concept be imported wholesale from a different *Charter* right.

[46] In any event, effective representation connotes *voter parity* which, while not exhaustive of the requirements of effective representation, is the overarching concern and the condition of "prime importance" (*Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 S.C.R. 158, at p. 184). What matters is the *relative population* of the wards, *not* their *absolute size*. To hold otherwise implies keeping the population of wards relatively constant by increasing the number of councillors to keep pace with population growth, a notion unknown to Canadian law (in s. 3 or elsewhere) and which would not be without its own difficulties, including potentially unwieldly growth in the size of Toronto City Council (M. Pal, "The Unwritten Principle of Democracy" (2019), 65 *McGill L.J.* 269, at pp. 298-99; J. C. Courtney, *Commissioned Ridings: Designing Canada's Electoral Districts* (2001), at pp. 15 and 19).

[47] And *even were* effective representation to apply as a consideration here, we would not find that the principle has been violated due only to the larger population sizes of the wards created by the *Act*. It is not disputed that the 25-ward structure of the *Act* enhanced voter parity, relative to the 47-ward structure preferred by the City (which was not even designed to achieve voter parity until 2026) (A.F., at para. 150; R.F., at paras. 35, 38, 133, 143 and 148). Indeed, the Toronto Ward Boundary Review's reasoning for having rejected the 25-ward structure was criticized on this very basis (R.R. (short), vol. II, at pp. 65, 69, 72-73 and 77-78). While the principle of effective representation encompasses more than simple voter parity, those who rely upon the principle of effective representation here fail to identify any other factors — geography,

community history, community interests and minority representation — that could conceivably justify a departure from parity (see *Reference re Prov. Electoral Boundaries (Sask.)*, at p. 184).

B. *Democracy*

[48] The second issue on appeal is whether the impugned provisions of the *Act* are unconstitutional for violating the unwritten constitutional principle of democracy. Specifically, the City argues that the change in ward structure violated the unwritten principle of democracy by denying voters effective representation and disrupting the election process (A.F., at para. 105). It therefore asks the Court to use the democratic principle as a basis for invalidating otherwise valid provincial legislation. It says this is made possible by drawing from this Court's s. 3 jurisprudence and from the concept of effective representation, and by viewing the principle as limiting provincial competence under s. 92(8). Conversely, and echoing the Court of Appeal on this point, the Attorney General of Ontario says that the unwritten constitutional principle of democracy cannot be used as a device for invalidating legislation, independently of written constitutional provisions and the law governing them. For the reasons that follow, the Attorney General is correct.

(1) Interpretive and Gap-Filling Roles of Unwritten Constitutional Principles

[49] The Constitution of Canada embodies written and unwritten norms. This Court has recognized that our Constitution describes an architecture of the institutions of state and of their relationship to citizens that connotes certain underlying principles (*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, 1997 CanLII 317 (SCC), [1997] 3 S.C.R. 3, at para. 93; *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217, at paras. 50-51). These principles, such as democracy and the rule of law, "infuse our Constitution" (*Secession Reference*, at para. 50). Although not recorded outside of "oblique reference[s]" in the preamble to the *Constitution Act, 1867* and to the *Constitution Act, 1982* (para. 51), these principles are "foundational" (para. 49), without which "it would be impossible to conceive of our constitutional structure" (para. 51). These principles have "full legal force" and may give rise to substantive legal obligations (para. 54, quoting *Reference re Resolution to Amend the Constitution*, 1981 CanLII 25 (SCC), [1981] 1 S.C.R. 753, at p. 845). "[L]ike all principles of political morality, [they] can guide and constrain the decision-making of the executive and legislative branches" (C.A. reasons, at para. 84, citing *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473, at para. 52).

[50] Unwritten principles are therefore part of *the law* of our Constitution, in the sense that they form part of the context and backdrop to the Constitution's written terms. Our colleague Abella J. seizes upon a statement from a dissenting opinion in *Reference re Resolution to Amend the Constitution* to support the proposition that "full legal force" necessarily includes the power to invalidate legislation. But the complete passage in *Reference re Resolution to Amend the Constitution*, and the jurisprudence cited therein, demonstrates that Martland and Ritchie JJ. are discussing *federalism* —— and, while specific aspects of federalism may be unwritten and judicially developed, it is indisputable that federalism has a strong textual basis. Nor does our colleague's reliance upon *MacMillan Bloedel Ltd. v. Simpson*, 1995 CanLII 57 (SCC), [1995] 4 S.C.R. 725 (at para. 176), support the capacity of unwritten constitutional principles to invalidate legislation, since the finding there was that granting exclusive jurisdiction to the youth court would infringe ss. 96 to 101 and 129 of the *Constitution Act, 1867*. Regardless, any uncertainty on the question of whether unwritten constitutional principles may invalidate legislation that may have remained after the *Reference re Resolution to Amend the Constitution* and the *Secession Reference* was, as we will explain, fully put to rest in *Imperial Tobacco*.

[51] Further, the authorities she cites as "recogniz[ing] that unwritten constitutional principles have full legal force and can serve as substantive limitations on all branches of government" (para. 166) do not support the proposition that unwritten constitutional principles can be applied to invalidate legislation. Indeed, it is quite the contrary — for example, in *R. (on the application of Miller) v. Prime Minister*, [2019] UKSC 41, [2020] A.C. 373, at para. 41, the Supreme Court of the United Kingdom stated that the constitutional principle of parliamentary sovereignty means that *legislation itself* ("laws enacted by the Crown in Parliament"), under the Constitution of the United Kingdom, remains "the supreme form of law". While courts in the United Kingdom may find primary legislation to be inconsistent with the *European Convention on Human Rights*, 213 U.N.T.S. 221, they may only issue a declaration of incompatibility (*Human Rights Act 1998* (U.K.), 1998, c. 42, s. 4); they have not used unwritten constitutional principles to invalidate legislation.

[52] Our colleague is concerned about the "rare case" where "legislation [that] elides the reach of any express constitutional provision . . . is fundamentally at odds with our Constitution's 'internal architecture' or 'basic constitutional structure'" and recourse must be had to unwritten constitutional principles (para. 170, quoting *Secession Reference*, at para. 50, and *OPSEU v. Ontario (Attorney General)*, 1987 CanLII 71 (SCC), [1987] 2 S.C.R. 2, at p. 57). But it is inconceivable that legislation which is repugnant to our "basic constitutional structure" would not infringe the Constitution itself. And that structure, recorded in the Constitution's text (as we discuss below), is interpreted with the aid of unwritten constitutional principles. This is clear from the context of Martland and Ritchie JJ.'s statement that unwritten principles have "full legal force in the sense of being employed to strike down legislative enactments" (*Reference re Resolution to Amend the Constitution*, at p. 845). As noted above, that case was about federalism, as was the jurisprudence cited in support of their statement; Martland and Ritchie JJ. were describing the "constitutional requirements that are derived from the federal character of Canada's Constitution" (pp. 844-45 (emphasis added)). And this is precisely the point —— while the specific aspects of federalism at issue there may not have been found in the express terms of the Constitution, *federalism is*.

[53] To explain, federalism is fully enshrined *in the structure* of our Constitution, because it is enshrined *in the text* that is constitutive thereof —— particularly, but not exclusively, in ss. 91 and 92 of the *Constitution Act, 1867*. Structures are not comprised of unattached externalities; they are embodiments of their constituent, conjoined parts. The structure of our Constitution is identified by way of its actual provisions, recorded in its text. This is why our colleague can offer no example of legislation that would undermine the structure of the Constitution that cannot be addressed as we propose, which is via purposive textual interpretation. It is also why, once "constitutional structure" is properly understood, it becomes clear that, when our colleague invokes "constitutional structure", she is in substance inviting judicial invalidation of legislation in a manner that is wholly untethered from that structure.

[54] Ultimately, what "full legal force" means is dependent on the particular context. Any legal instrument or device, such as a contract or a will or a rule, has "full legal force" within its proper ambit. Our colleague's position — that because unwritten constitutional principles have "full legal force", they must necessarily be capable of invalidating legislation — assumes the answer to the preliminary but essential question: what *is* the "full legal force" of *unwritten constitutional principles*? And in our view, *because* they are unwritten, their "full legal force" is realized *not* in *supplementing* the written text of our Constitution as "provisions of the Constitution" with which no law may be inconsistent and remain of "force or effect" under s. 52(1) of the *Constitution Act, 1982*. Unwritten constitutional principles are not "provisions of the Constitution". Their legal force lies in their representation of general principles within which our constitutional order operates and, therefore, by which the Constitution's written terms — its *provisions* — are to be given effect. In practical terms, this means that unwritten constitutional principles may assist courts in only two distinct but related ways.

[55] First, they may be used in the interpretation of constitutional provisions. Indeed, that is the "full legal force" that this Court described in *Secession Reference* (para. 54). In this way, the unwritten constitutional principles of judicial independence and the rule of law have aided in the interpretation of ss. 96 to 100 of the *Constitution Act, 1867*, which have come to safeguard the core jurisdiction of the courts which fall within the scope of those provisions (*Provincial Court Judges Reference*, at paras. 88-89; *MacMillan Bloedel*, at paras. 10-11 and 27-28; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31, at paras. 29-33). When applied to *Charter* rights, unwritten principles assist with purposive interpretation, informing "the character and the larger objects of the *Charter* itself, . . . the language chosen to articulate the specific right or freedom, [and] the historical origins of the concepts enshrined" (*Quebec (Attorney General)*, at para. 7, quoting *Big M Drug Mart Ltd.*, at p. 344; see also *R. v. Poulin*, 2019 SCC 47, at para. 32).

[56] Secondly, and relatedly, unwritten principles can be used to develop structural doctrines unstated in the written Constitution *per se*, but necessary to the coherence of, and flowing by implication from, its architecture. In this way, structural doctrines can fill gaps and address important questions on which the text of the Constitution is silent, such as the doctrine of full faith and credit (*Morguard Investments Ltd. v. De Savoye*, 1990 CanLII 29 (SCC), [1990] 3 S.C.R. 1077; *Hunt v. T&N plc*, 1993 CanLII 43 (SCC), [1993] 4 S.C.R. 289); the doctrine of paramountcy (*Huson v. The Township of South Norwich* (1895), 1895 CanLII 1 (SCC), 24 S.C.R. 145); the remedy of suspended declarations of invalidity (*Reference re Manitoba Language Rights*, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721); and the obligations to negotiate that would follow a declaration of secession by a province (*Secession Reference*).

[57] Neither of these functions support the proposition advanced by the City that the force of unwritten principles extends to invalidating legislation. Indeed, the truth of the matter is to the contrary. Attempts to apply unwritten constitutional principles in such a manner as an independent basis to invalidate legislation, whether alone or in combination, suffer from a normative and a practical deficiency, each related to the other, and each fatal on its own.

[58] First, such attempts trespass into legislative authority to amend the Constitution, thereby raising fundamental concerns about the legitimacy of judicial review and distorting the separation of powers (*Imperial Tobacco*, at paras. 53-54, 60 and 64-67; J. Leclair, "Canada's Unfathomable Unwritten Constitutional Principles" (2002), 27 *Queen's L.J.* 389, at pp. 427-32). Our colleague's approach, which invites the use of unwritten constitutional principles in a manner that is wholly untethered from the text, ignores this fundamental concern.

[59] Secondly, unwritten constitutional principles are "highly abstract" and "[u]nlike the rights enumerated in the *Charter* — rights whose textual formulations were debated, refined and ultimately resolved by the committees and legislative assemblies entrusted with constitution-making authority — the concep[t] of democracy . . . ha[s] no canonical formulatio[n]" (C.A. reasons, at para. 85). Unlike the written text of the Constitution, then, which "promotes legal certainty and predictability" in the exercise of judicial review (*Secession Reference*, at para. 53), the nebulous nature of the unwritten principles makes them susceptible to be interpreted so as to "render many of our written constitutional rights redundant and, in doing so, undermine the delimitation of those rights chosen by our constitutional framers" (*Imperial Tobacco*, at para. 65). Accordingly, there is good reason to insist that "protection from legislation that some might view as unjust or unfair properly lies not in the amorphous underlying principles of our Constitution, but in its text and the ballot box" (para. 66). In our view, this statement should be understood as covering all possible bases for claims of right (i.e., "unjust or unfair" *or otherwise normatively deficient*).

[60] We add this. Were a court to rely on unwritten constitutional principles, in whole or in part, to invalidate legislation, the consequences of this judicial error would be of particular significance given two provisions of our *Charter*. First, s. 33 preserves a limited right of legislative override. Where, therefore, a court invalidates legislation using s. 2(b) of the *Charter*, the legislature may give continued effect to *its* understanding of what the Constitution requires by invoking s. 33 and by meeting its stated conditions (D. Newman, "Canada's Notwithstanding Clause, Dialogue, and Constitutional Identities", in G. Sigalet, G. Webber and R. Dixon, eds., *Constitutional Dialogue: Rights, Democracy, Institutions* (2019), 209, at p. 232). Were, however, a court to rely *not* on s. 2(b) but *instead* upon an unwritten constitutional principle to invalidate legislation, this undeniable aspect of the constitutional bargain would effectively be undone, since s. 33 applies to permit legislation to operate "notwithstanding a provision included in section 2 or sections 7 to 15" *only*. Secondly, s. 1 provides a basis for the state to justify limits on "the rights and freedoms set out" in the *Charter*. Unwritten constitutional principles, being *unwritten*, are not "set out" in the *Charter*. To find, therefore, that they can ground a constitutional violation would afford the state no corresponding justificatory mechanism.

[61] Our colleague says that the application of s. 33 "is not directly before us" (para. 182). As the City has advanced its claim on the basis of s. 2(b), coupled with the unwritten principle of democracy, the prospect of circumventing s. 33's application to the invalidation of legislation under s. 2(b) by recourse to unwritten constitutional principles is indeed squarely before us.

[62] We note an important caveat to the foregoing. The unwritten constitutional principle of the honour of the Crown is *sui generis*. As correctly noted in submissions of the interveners the Métis Nation of Ontario and the Métis Nation of Alberta, the honour of the Crown arises from the assertion of Crown sovereignty over pre-existing Aboriginal societies (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511, at para. 32), and from the unique relationship between the Crown and Indigenous peoples (*Guerin v. The Queen*, 1984 CanLII 25 (SCC), [1984] 2 S.C.R. 335, at

p. 385). We need not decide here whether the principle is capable of grounding the constitutional invalidation of legislation, but if it is, it is unique in this regard.

[63] In sum, and contrary to the submissions of the City, unwritten constitutional principles cannot serve as bases for invalidating legislation. A careful review of the Court's jurisprudence supports this conclusion.

(a) *The Provincial Court Judges Reference*

[64] In the *Provincial Court Judges Reference*, this Court considered whether judicial independence, "an unwritten norm, recognized and affirmed by the preamble to the *Constitution Act, 1867*" (para. 109), restricted the extent to which a provincial government could reduce the salaries of provincial court judges. That principle, the Court held, emerged from the reading together of s. 11(d) of the *Charter*, and the preamble and ss. 96 to 100 of the *Constitution Act, 1867* (para. 124). For the majority, Lamer C.J. was explicit in emphasizing the merely *interpretive* role of the unwritten constitutional principle of judicial independence in supplementing the text of ss. 96 and 100:

> The point which emerges from this brief discussion is that the interpretation of ss. 96 and 100 has come a long way from what those provisions actually say. This jurisprudential evolution undermines the force of the argument that the written text of the Constitution is comprehensive and definitive in its protection of judicial independence. The only way to explain the interpretation of ss. 96 and 100, in fact, is by reference to a deeper set of unwritten understandings which are not found on the face of the document itself. [First and second emphasis added; third emphasis in original; para. 89.]

[65] In other words, where the constitutional text is not itself sufficiently definitive or comprehensive to furnish the answer to a constitutional question, a court may use unwritten constitutional principles as interpretive aids. This is an approach that resorts to unwritten constitutional principles where necessary in order to give meaning and effect to constitutional text. It is thus not dissimilar to this Court's approach to purposive constitutional interpretation, which begins with and is grounded in the text (*Quebec (Attorney General)*, at paras. 8-10); unwritten constitutional principles inform the purpose of the provisions of the text, thus guiding the purposive definition (R. Elliot, "References, Structural Argumentation and the Organizing Principles of Canada's Constitution" (2001), 80 *Can. Bar Rev.* 67, at p. 84). To be clear, this must be a textually faithful exercise; the text remains of primordial significance to identifying the purpose of a right, being "the first indicator of purpose" (*Quebec (Attorney General)*, at para. 11), and the application of constitutional principles to the interpretive exercise may not allow a court to overshoot that purpose (paras. 4 and 10-11). More particularly, and as the Court affirmed in *Quebec (Attorney General)*, the Constitution "is not 'an empty vessel to be filled with whatever meaning we might wish from time to time'" (para. 9, quoting *Reference re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313, at p. 394). Rather, constitutional interpretation "must first and foremost have reference to, and be constrained by, [its] text" (para. 9).

[66] Our colleague resists this, notwithstanding the clear direction in *Quebec (Attorney General)* regarding the centrality to the interpretational exercise of constitutional text. Indeed, her approach is completely the opposite: far from being the primary element of the Constitution whose interpretation can be informed by unwritten constitutional principles, the text *itself* "emanates" from those principles, and thus it is *the principles* which are paramount (para. 168). This is entirely inconsistent with the *Provincial Court Judges Reference*, upon which she relies. Lamer C.J. applied the unwritten constitutional principle of judicial independence to guide his interpretation of the scope of provincial authority under s. 92(14) of the *Constitution Act, 1867* and to fill a gap where provincial courts dealing with non-criminal matters were concerned (paras. 107-8). None of this supports applying unwritten constitutional principles as bases for invalidating legislation.

(b) *The Secession Reference*

[67] In *Secession Reference*, this Court said:

> Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have "full legal force", as we described it in [*Reference re Resolution to Amend the Constitution*], *supra*, at p. 845), which constitute substantive limitations upon government action. These principles may give rise to very abstract and general obligations, or they may be more specific and precise in nature. The principles are not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and governments. [para. 54]

A faithful reading of this passage must acknowledge the force ascribed to unwritten constitutional principles. Of significance, however, is that such force was conditioned by the nature of the questions posed in the reference — the conditions for secession of a province from Confederation — which the Court was called upon to answer. The case combined "legal and constitutional questions of the utmost subtlety and complexity with political questions of great sensitivity" (para. 1, quoting *Reference re Manitoba Language Rights*, at p. 728) to which the Court proposed an answer (being an obligation to negotiate in some circumstances) which, while constituting a "legal framework" in the form of a set of rules to legitimize secession, was enforceable only *politically* as "it would be for the democratically elected leadership of the various participants to resolve their differences" (para. 101 (emphasis added); see also Elliot, at p. 97).

[68] Of course, the Court made clear that it had identified "binding obligations under the Constitution of Canada" (para. 153), and that a breach of those obligations would occasion "serious legal repercussions" (para. 102). But the Court also acknowledged the "non-justiciability of [the] political issues" involved (para. 102), which meant that the Court could have "no supervisory role" over the political negotiations (para. 100). Recognizing that the "reconciliation of the various legitimate constitutional interests is necessarily committed to the political rather than the judicial realm" (para. 153), the Court fashioned rules in the event of whose breach the "appropriate recourse" would lie in "the workings of the political process rather than the courts" (para. 102). This is another instance of the separation of powers: courts do not supervise the legislature or the executive as to political process.

[69] Nothing, therefore, in the *Secession Reference* supports the proposition that unwritten constitutional principles can serve as an independent basis to invalidate legislation. While the obligations for the respective parties in that case had legal force by way of a judicial declaration, how that declaration would be given effect — that is, *enforced* — was deemed a question of political process, not legal process. Here again, as in the case of constitutional interpretation, the structural gap-filling role of unwritten constitutional principles was not and, we say, could not, be applied to *invalidate* legislation in the sense of declaring it under s. 52 to be of no force or effect.

(c) *Babcock and Imperial Tobacco*

[70] At issue in *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [2002] 3 S.C.R. 3, was the constitutionality of a provision of the *Canada Evidence Act*, R.S.C. 1985, c. C-5, that allowed for an exception to disclosure, in litigation, based on Cabinet confidence. The respondents argued that the provision was *ultra vires* Parliament due to its inconsistency with the unwritten constitutional principles of the rule of law, judicial independence, and the separation of powers (by allowing the executive to prevent disclosure of evidence of its own unconstitutional conduct). McLachlin C.J., writing for the majority, held that "[a]lthough the unwritten constitutional principles are capable of limiting government actions, . . . they do not do so in this case" (para. 54 (emphasis added)). She reached this conclusion on the basis that "unwritten principles must be balanced against the principle of Parliamentary sovereignty" (para. 55), concluding:

> It is well within the power of the legislature to enact laws, even laws which some would consider draconian, as long as it does not fundamentally alter or interfere with the relationship between the courts and the other branches of government. [para. 57]

[71] McLachlin C.J.'s statement that unwritten constitutional principles are "capable of limiting government actions" was later explained by this Court in *Imperial Tobacco*. There, legislation authorizing action by the Province of British Columbia against tobacco manufacturers was challenged on the basis that it was inconsistent with, *inter alia*, the unwritten constitutional principle of the rule of law. For the Court, Major J. unequivocally rejected the appellants' proposed use of the rule of law to invalidate legislation for two reasons, only one of which is of relevance here:

> . . . the appellants' arguments overlook the fact that several constitutional principles other than the rule of law that have been recognized by this Court — most notably democracy and constitutionalism — very strongly favour upholding the validity of legislation that conforms to the express terms of the Constitution (and to the requirements, such as judicial independence, that flow by necessary implication from those terms). Put differently, the appellants' arguments fail to recognize that in a constitutional democracy such as ours, protection from legislation that some might view as unjust or unfair properly lies not in the amorphous underlying principles of our Constitution, but in its text and the ballot box. [Emphasis added; para. 66.]

[72] In other words, unwritten constitutional principles are indeterminate, such that they could be in theory deployed *not only* in service of *invalidating* legislation, but of *upholding* it. Major J. continued: the recognition of an unwritten constitutional principle such as the rule of law "is not an invitation to trivialize or supplant the Constitution's written terms", nor "is it a tool by which to avoid legislative initiatives of which one is not in favour. On the contrary, it requires that courts give effect to the Constitution's text, and apply, by whatever its terms, legislation that conforms to that text" (para. 67). From this, it follows that the statement in *Babcock* that unwritten constitutional principles are "capable of limiting government actions" is to be understood in a narrow and particular sense: legislative measures are restrained by the unwritten principle of the rule of law, "but only in the sense that they must comply with legislated requirements as to manner and form (i.e., the procedures by which legislation is to be enacted, amended and repealed)" (*Imperial Tobacco*, at para. 60). Again, this understanding of unwritten constitutional principles precludes entirely their application to invalidate legislation under s. 52.

[73] This, we would add, is a complete answer to our colleague Abella J.'s assertions that this Court has "never, to date, limited" the role of unwritten constitutional principles, and that their interpretive role is not "narrowly constrained by textualism" (paras. 171 and 179). Our colleague reads *Imperial Tobacco* as narrowing the use of one specific unwritten constitutional principle —— the rule of law —— and not unwritten constitutional principles generally. But the problem of indeterminacy would inevitably arise with the use of *any* unwritten constitutional principle to invalidate legislation. *Imperial Tobacco* thus unequivocally affirmed both a narrow interpretive role for unwritten principles, and the primacy of the text in constitutional adjudication.

(d) *Trial Lawyers Association of British Columbia*

[74] In *Trial Lawyers Association of British Columbia*, this Court was called upon to decide the constitutionality of court hearing fees imposed by British Columbia that denied some people access to the courts. For the majority, McLachlin C.J. held that those fees, enacted pursuant to s. 92(14) of the *Constitution Act, 1867*, violated s. 96 of the *Constitution Act, 1867* as they impermissibly infringed on the jurisdiction of superior courts by denying some people access to the courts (paras. 1-2). In *obiter*, she added that the connection between s. 96 and access to justice was "further supported by considerations relating to the rule of law" (para. 38), as "[t]here cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice" (para. 38, quoting *B.C.G.E.U. v. British Columbia (Attorney General)*, 1988 CanLII 3 (SCC), [1988] 2 S.C.R. 214, at p. 230). This was, she said, "consistent with the approach adopted by Major J. in *Imperial Tobacco*" (para. 37):

> The legislation here at issue — the imposition of hearing fees — must conform not only to the express terms of the Constitution, but to the "requirements . . . that flow by necessary implication from those terms" (para. 66). The right of Canadians to access the superior courts flows by necessary implication from the express terms of s. 96 of the *Constitution Act, 1867* as we have seen. It follows that the province does not have the power under s. 92(14) to enact legislation that prevents people from accessing the courts. [Emphasis added; para. 37.]

[75] In our view, McLachlin C.J.'s invocation of Major J.'s "necessary implication" threshold from *Imperial Tobacco* signifies that, where unwritten constitutional principles are used as interpretive aids, their substantive legal force must arise by necessary implication from the Constitution's text. We therefore see nothing in this that is inconsistent with the *Provincial Court Judges Reference* and, in particular, with the limited scope of application of unwritten constitutional principles. The rule of law was used in *Trial Lawyers Association of British Columbia* as an interpretive aid to s. 96, which in turn was used to narrow provincial legislative authority under s. 92(14). The rule of law was not being used as an independent basis for invalidating the impugned court fees. In this way, McLachlin C.J.'s reasoning simply reflects a purposive interpretation of s. 96 informed by unwritten constitutional principles.

(2) Relevance of the Democratic Principle to Municipal Elections

[76] Democracy is, in light of the foregoing, a principle by which our Constitution is to be understood and interpreted. Though not explicitly identified in the text, the basic structure of our Constitution — including its establishment of the House of Commons and of provincial legislatures — connotes certain freely elected, representative, and democratic political institutions (*Secession Reference*, at para. 62).

[77] The democratic principle has both individual and institutional dimensions (para. 61). It embraces not only the process of representative and responsible government and the right of citizens to participate in that process at the provincial and federal levels, but also substantive goals including the promotion of self-government (paras. 64-65). So understood, the democratic principle sits alongside and indeed overlaps with other unwritten constitutional principles that this Court has recognized, including federalism and the rule of law (paras. 66-67).

[78] In this case, the democratic principle is relevant as a guide to the interpretation of the constitutional text. It supports an understanding of free expression as including political expression made in furtherance of a political campaign (*Reference re Prov. Electoral Boundaries (Sask.)*; *Reference re Alberta Statutes*, 1938 CanLII 1 (SCC), [1938] S.C.R. 100; *Switzman v. Elbling*, 1957 CanLII 2 (SCC), [1957] S.C.R. 285; *OPSEU*). But it cannot be used in a manner that goes beyond this interpretive role. In particular, it cannot be used as an independent basis to invalidate legislation.

(a) *Section 92(8) of the Constitution Act, 1867*

[79] The structure of neither the *Constitution Act, 1867* nor the *Constitution Act, 1982* requires by necessary implication the circumscription of provincial lawmaking authority under s. 92(8) in the manner proposed. Subject to the *Charter*, the province has "absolute and unfettered legal power" to legislate with respect to municipalities (*Ontario English Catholic Teachers' Assn.*, at para. 58). And this Court cannot grant constitutional status to a third order of government "where the words of the Constitution read in context do not do so" (*Baier*, at para. 39).

[80] Indeed, the City's submissions neglect the fact, recognized in the passage from *Imperial Tobacco*, at para. 66, cited above, that unwritten constitutional principles other than the rule of law that have been recognized by this Court, including democracy and constitutionalism, strongly favour *upholding* the validity of legislation that conforms to the text of the Constitution. It follows that the unwritten constitutional principle of democracy cannot be used to narrow legislative competence under s. 92(8); as this Court has recognized, the provinces have plenary jurisdiction under this head of power, unrestricted by any constitutional principle (*Public School Boards' Assn. of Alberta*).

(b) *Section 3 of the Charter*

[81] Nor can the democratic principle be used to make s. 3 of the *Charter* — including its requirement of effective representation — relevant to the current case. There is no open question of constitutional interpretation here. Section 3 democratic rights were not extended to candidates or electors to municipal councils. This is not a gap to be addressed judicially. The absence of municipalities in the constitutional text is, on the contrary, a deliberate omission (*Imperial Tobacco*, at para. 65). As the intervener the Federation of Canadian Municipalities argues, municipalities (or at least chartered towns) predate the *Magna Carta* (1215). Their existence and importance would have been known to the framers in 1867. The constitutional status of municipalities, and whether they ought to enjoy greater independence from the provinces, was a topic of debate during patriation (*House of Commons Debates*, vol. X, 1st Sess., 32nd Parl., June 15, 1981, at p. 10585). In the end, municipalities were not constitutionalized, either in amendments to the *Constitution Act, 1867* or by reference in the democratic rights enshrined in the *Charter*.

[82] Unlike in the *Provincial Court Judges Reference*, therefore, there is no textual basis for an underlying constitutional principle that would confer constitutional status on municipalities, or municipal elections. The entitlement to vote in elections to bodies not mentioned in s. 3 is therefore a matter for Parliament and provincial legislatures (*Haig*, at p. 1033; *Baier*, at para. 39). Again, and like the school boards at issue in *Baier*, municipalities are mere creatures of statute who exercise whatever powers, through officers appointed by whatever process, that provincial legislatures consider fit. Were the unwritten democratic principle applied to require *all* elections to conform to the requirements of s. 3 (including municipal elections, and not just elections to the House of Commons or provincial legislatures), the text of s. 3 would be rendered substantially irrelevant and redundant (*Imperial Tobacco*, at para. 65). To repeat: the withholding of constitutional status for municipalities, and their absence from the text of s. 3, was the product of a deliberate omission, not a gap. The City's submissions ignore that application of the democratic principle is properly applied to *interpreting* constitutional text, and not *amending* it or *subverting* its limits by ignoring "the primordial significance assigned by this Court's jurisprudence to constitutional text in undertaking purposive interpretation" (*Quebec (Attorney General)*, at para. 4). It is not for the Court to do by "interpretation" what the framers of our Constitution chose not to do by enshrinement, or their successors by amendment.

(3) Conclusion on the Democratic Principle

[83] Even had the City established that the *Act* was inconsistent with the principle of democracy, it follows from the foregoing discussion that a court could not rely on that inconsistency to find the *Act* unconstitutional. The *Act* was enacted pursuant to a valid legislative process and the Province had no obligation to consult with the City before it introduced the legislation, or to introduce the legislation at a particular time. (As the application judge correctly noted, the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A, does not impose an immutable obligation to consult since the Province could enact the *Act* and overrule its previous enactment. Moreover, the related *Toronto-Ontario Cooperation and Consultation Agreement* did not bind the Province in law.)

[84] In short, and despite their value as interpretive aids, unwritten constitutional principles cannot be used as bases for invalidating legislation, nor can they be applied to support recognizing a right to democratic municipal elections by narrowing the grant to provinces of law-making power over municipal institutions in s. 92(8) of the *Constitution Act, 1867*. Nor can they be applied to judicially amend the text of s. 3 of the *Charter* to require municipal elections or particular forms thereof. The text of our Constitution makes clear that municipal institutions lack constitutional status, leaving no open question of constitutional interpretation to be addressed and, accordingly, no role to be played by the unwritten principles.

V. Conclusion

[85] We would dismiss the appeal.

The reasons of Abella, Karakatsanis, Martin and Kasirer JJ. were delivered by

ABELLA J. —

[86] Elections are to democracy what breathing is to life, and fair elections are what breathe life into healthy democracies. They give the public a voice into the laws and policies they are governed by, and a chance to choose who will make those laws and policies. It is a process of reciprocal political discourse.

[87] The rules of an election, including the electoral boundaries and the timelines for campaigns, structure the process of reciprocal dialogue between candidates and voters in their electoral districts. The final act of voting, itself a form of political expression, is the culmination of the process of deliberative engagement throughout an election period. The stability of the electoral process is therefore crucial not only to political legitimacy, but also to the rights of candidates and voters to meaningfully engage in the political discourse necessary for voters to cast an informed vote, and for those elected to govern in response to the expressed views of the electorate.

[88] The 2018 Toronto municipal election had been underway for three and a half months when the Province of Ontario enacted legislation that radically redrew the City of Toronto's electoral ward boundaries by reducing the number of wards from 47 to 25. Nominations had closed, campaigns were in full swing, and voters had been notified of who wanted to represent them and why.

[89] The issue in this appeal is not whether the Province had the legal authority to change the municipal wards. It is whether the Province could do so in the middle of an ongoing municipal election, thereby destabilizing the foundations of the electoral process and interfering with the ability of candidates and voters to engage in meaningful political discourse during the period leading up to voting day.

[90] Completely revamping the electoral process in the middle of an election was unprecedented in Canadian history. The question is whether it was also unconstitutional. In my respectful view, it was.

Background

[91] In June 2013, City Council approved a Toronto Ward Boundary Review under its authority to establish, change or dissolve wards (*City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A, s. 128(1)). The mandate of the Boundary Review was "to bring a recommendation to Toronto City Council on a ward boundary configuration that respects the principle of 'effective representation'" (Canadian Urban Institute, *Draw the Line: Toronto Ward Boundary Review Project Work Plan, Civic Engagement & Public Consultation Strategy*, April 28, 2014 (online), at p. 1). At the time, there were 44 wards in the City of Toronto.

[92] Over the next nearly four years, the Boundary Review conducted research, held public hearings, and consulted extensively. External consultants were hired who developed recommendations, organized extensive stakeholder consultations, held meetings with City Council and the Mayor's staff, and individually interviewed members of the 2010-2014 City Council and new 2014-2018 members. Altogether, they held over 100 face-to-face meetings with City Council, school boards and other stakeholders, as well as 24 public meetings and information sessions.

[93] The four year process resulted in seven reports. A draft of each report was reviewed by an outside five-person Advisory Panel. The Boundary Review's *Options Report*, in August 2015, analyzed eight options for drawing new ward boundaries, concluding that five options met the requirement of effective representation. Of particular significance to this appeal, one of the rejected options was redesigning the wards to mirror the 25 federal electoral districts.

[94] The Boundary Review's *Final Report*, in May 2016, recommended *increasing* the number of wards from 44 to 47.

[95] At the direction of the Executive Committee of City Council, two further reports were prepared by the Boundary Review in 2016, one in August and one in October. Among other options, the 25 federal electoral district proposal was again examined. Those reports again recommended the 47-ward structure, concluding that applying the boundaries of the 25 federal electoral districts would not achieve effective representation or resolve significant population imbalances, in part, since they were based on the 2011 census and were expected to be redrawn after the 2021 census. The Boundary Review, on the other hand, was based on population estimates for 2026 "to ensure that any new ward structure will last for several elections and constant ward boundary reviews are not required" (*Additional Information Report*, August 2016 (online), at p. 10).

[96] City Council adopted the 47-ward structure in November 2016, which was enacted through By-laws Nos. 267-2017 and 464-2017 in March and April 2017. The goal was to create a stable electoral framework for multiple elections. The By-laws were intended to govern the City of Toronto's municipal elections from 2018 to 2026, and, possibly, 2030.

[97] The 47-ward structure was appealed to the Ontario Municipal Board by various individuals, including those seeking to have the city divided into wards that mirrored the 25 federal electoral districts. After seven days of hearings, a majority of the Board rejected the appeals and approved the By-laws on December 15, 2017 (*Di Ciano v. Toronto (City)*, 2017 CanLII 85757). In its decision, the Board explained why it found the By-laws to be reasonable:

> The Board finds that the work undertaken by the [Boundary Review] culminating in the By-laws setting out a 47-ward structure was comprehensive. The ward structure delineated in the By-laws provides for effective representation and corrects the current population imbalance amongst the existing 44 wards. The decision made by Council to adopt the By-laws was defensible, fair and reasonable. The decision by Council to implement a 47-ward structure does not diverge from the principles of voter equity and effective representation. In this regard, there is nothing unreasonable in the decision of Council. [para. 51]

[98] An application was made to the Divisional Court for leave to appeal the Board's decision by two individuals who had unsuccessfully argued before the Board that the 25 federal electoral districts should be implemented. On March 6, 2018, the motion was dismissed (*Natale v. City of Toronto*, 2018 ONSC 1475, 1 O.M.T.R. 349). Swinton J. concluded that the Board applied the correct governing principle, namely, "effective representation":

> Setting electoral boundaries is an exercise that requires a weighing of many policy considerations. The Board heard from a number of expert witnesses over the course of a seven day hearing. It considered relative voter parity as well as other factors. It concluded that communities of interest are best respected in a 47 ward structure. It also noted that a 25 ward structure could increase voter population in the wards "resulting in a significant impact on the capacity to represent". [Citations omitted; para. 10.]

[99] On May 1, 2018, nominations opened for candidates seeking election in Toronto's 47 wards.

[100] On June 7, 2018, a new provincial government was elected. On the day that nominations for City Council closed, July 27, 2018, the Premier, Doug Ford, announced that the government intended to introduce legislation that would reduce the size of Toronto's City Council from 47 to 25 councillors.

[101] The Boundary Review had researched the issue of effective representation for nearly 4 years, concluding that the 25 federal electoral districts would not achieve effective representation and would have an insignificant difference in terms of voter parity. Ontario did not conduct any redistricting studies or send the proposed legislation to Committee for consultation before it was enacted.

[102] The legislation was introduced for the first reading in the Legislative Assembly on July 30, 2018 and came into force on August 14, 2018, 69 days before the scheduled election date. The election had been underway for three and a half months. By then, thousands of candidates had signed up and 509 were certified and actively campaigning in Toronto's 47 wards.

[103] The nomination period was extended to September 14, 2018, but the election date remained the same — October 22, 2018. That gave candidates, all of whom would have to seek new nominations or notify the City Clerk of their intention to continue in the race by filing a change of ward notification form, just over one month to campaign in the new wards. Until nominations closed again on September 14, 2018, candidates and voters were in legal limbo awaiting the passage of regulations for the new electoral regime and the adjudication of a constitutional challenge to the mid-election changes that gave rise to this appeal. It was only after nominations closed that voters and candidates had a full picture of which candidates were running and in what wards.

[104] The new one-month campaign period was also characterized by the disruptive impact of abruptly changing the number, size and boundaries of the wards. Candidates who had been canvassing, responding to local issues, incurring expenses and developing community relationships were now faced with deciding whether and where to run. The old wards were eradicated, many of the new ones were almost twice as large, the populations were different, and there was only one month left to change wards, meet the new constituencies, learn what their concerns were, and engage with them on those issues.

[105] In the absence of any notice or additional time to fundraise, many previously certified candidates could no longer afford to run in these new and larger wards. Certified candidates had until September 14, 2018 to file a change of ward notification form or else their nominations would be deemed to be withdrawn (*Better Local Government Act, 2018*, S.O. 2018, c. 11 ("*Act*"), Sch. 3, s. 1; *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sch., s. 10.1(8)). When the present constitutional challenge was decided only days before that deadline, only 293 of the 509 previously certified candidates had taken the necessary steps to continue in the race. In the end, more than half of the previously certified candidates dropped out of the race before voting day.

[106] The City of Toronto and a number of candidates and electors applied to the Ontario Superior Court of Justice for an order declaring the legislation reducing the number of wards from 47 to 25 of no force or effect, pursuant to s. 52(1) of the *Constitution Act, 1982*.

[107] On September 10, 2018, Belobaba J. held that the *Act* was unconstitutional, infringing the rights of both candidates and voters under s. 2(b) of the *Canadian Charter of Rights and Freedoms* (2018 ONSC 5151, 142 O.R. (3d) 336). He held that the legislation violated the expressive rights of candidates by radically redrawing ward boundaries mid-election, and that it breached the rights of voters to cast a vote that could result in effective representation by doubling the population sizes of the wards.

[108] On September 19, 2018, the Ontario Court of Appeal ordered an interim stay of Belobaba J.'s order, meaning that the election would take place based on the new 25-ward structure (2018 ONCA 761, 142 O.R. (3d) 481). It took place on October 22, 2018.

[109] On September 19, 2019, the Court of Appeal allowed the appeal from Belobaba J.'s order (2019 ONCA 732, 146 O.R. (3d) 705). Writing for a 3-2 majority, Miller J.A. held that Belobaba J. "impermissibly extended the scope [of] s. 2(b)" to protect the effectiveness of efforts to convey political messages and to include a right to effective representation.

[110] In dissent at the Court of Appeal, MacPherson J.A. held that the timing of the *Act* infringed s. 2(b), concluding that "[b]y extinguishing almost half of the city's existing wards midway through an active election, Ontario blew up the efforts, aspirations and campaign materials of hundreds of aspiring candidates, and the reciprocal engagement of many informed voters".

[111] I agree with MacPherson J.A.

Analysis

[112] Under s. 92(8) of the *Constitution Act, 1867*, the provinces have exclusive jurisdiction over "Municipal Institutions in the Province". The question therefore of whether the Province has the authority to legislate a change in Toronto's ward structure is not the issue in this appeal. The issue is whether this *timing* mid-way through a municipal election was in violation of s. 2(b) of the *Charter*, which states:

> **2** Everyone has the following fundamental freedoms:
>
> . . .
>
> **(b)** freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

[113] The 2018 Toronto municipal election had already been underway for three and a half months when the number, size and boundaries of all the wards were changed.

[114] It is entirely beside the point to observe that elected municipal councils are creatures of statute. Section 2(b) of the *Charter* applies with equal vigour to protect political discourse during a municipal election as a federal or provincial one. When a province chooses to vest certain powers in a democratic municipality, municipal elections invariably become the locus of deliberative engagement on those delegated policy issues. It is incumbent on a provincial legislature to respect the rights of its citizens to engage in meaningful dialogue on municipal issues during an election period and, in particular, the rights of candidates and voters to engage in meaningful exchanges before voting day.

[115] When a democratic election takes place in Canada, including a municipal election, freedom of expression protects the rights of candidates and voters to meaningfully express their views and engage in reciprocal political discourse on the path to voting day. That is at the core of political expression, which in turn is at the core of what is protected by s. 2(b) of the *Charter*. When the state enacts legislation that has the effect of destabilizing the opportunity for meaningful reciprocal discourse, it is enacting legislation that interferes with the Constitution.

[116] Municipal elections have been a part of political life in Canada since before Confederation, and municipalities are a crucial level of government. The 1996 Greater Toronto Area Task Force explained their significance, emphasizing that "services should be delivered by local municipalities to ensure maximum efficiency and responsiveness to local needs and preferences" (*Greater Toronto*, at p. 174; see also D. Siegel, "Ontario", in A. Sancton and R. Young, eds., *Foundations of Governance: Municipal Government in Canada's Provinces* (2009), 20, at p. 22; A. Flynn, "Operative Subsidiarity and Municipal Authority: The Case of Toronto's Ward Boundary Review" (2019), 56 *Osgoode Hall L.J.* 271, at pp. 275-76). As Professor Kristin R. Good explains, municipalities are not "mere 'creatures of the provinces'", they are

> important democratic governments in their own right. The variations in multicultural policy making in Canadian cities are evidence that local choices, policies, and politics matter. Municipalities are important vehicles of the democratic will of local communities as well as important sites of multicultural democratic citizenship.
>
> (*Municipalities and Multiculturalism: The Politics of Immigration in Toronto and Vancouver* (2009), at p. 5)

[117] The democratically accountable character of municipalities is well established in our jurisprudence. In *Godbout v. Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 S.C.R. 844, La Forest J. wrote that "municipal councils are democratically elected by members of the general public and are accountable to their constituents in a manner analogous to that in which Parliament and the provincial legislatures are accountable to the electorates" (para. 51). Similarly, in *Catalyst Paper*

Corp. v. North Cowichan (District), 2012 SCC 2 (CanLII), [2012] 1 S.C.R. 5, McLachlin C.J. recognized that municipal councillors "serve the people who elected them and to whom they are ultimately accountable" (para. 19).

[118] The increasing significance of municipal governance has been accompanied by an increasingly generous interpretation of municipal powers. Writing for a unanimous Court in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19 (CanLII), [2004] 1 S.C.R. 485, Bastarache J. observed that "[t]he evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities" (para. 6). And in *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 (CanLII), [2001] 2 S.C.R. 241, L'Heureux-Dubé J. confirmed that "law-making and implementation are often best achieved at a level of government that is . . . closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity" (para. 3; see also *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 (CanLII), [2000] 1 S.C.R. 342).

[119] These cases built on McLachlin J.'s dissent in *Shell Canada Products Ltd. v. Vancouver (City)*, 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231, which stressed the "fundamental axiom" that

> courts must accord proper respect to the *democratic responsibilities of elected municipal officials and the rights of those who elect them*. This is important to the continued healthy functioning of democracy at the municipal level. If municipalities are to be able to respond to the needs and wishes of their citizens, they must be given broad jurisdiction to make local decisions reflecting local values. [Emphasis added; p. 245.]

[120] The reciprocal relationship between the democratic responsibilities of elected municipal officials and the rights of those who elected them is crucial. It requires what Duff C.J. called "the free public discussion of affairs" so that two sets of duties can be discharged — the duties of elected members "to the electors", and of electors "in the election of their representatives" (*Reference re Alberta Statutes*, 1938 CanLII 1 (SCC), [1938] S.C.R. 100, at p. 133; see also *Switzman v. Elbling*, 1957 CanLII 2 (SCC), [1957] S.C.R. 285, at pp. 306 and 326-27; *RWDSU v. Dolphin Delivery Ltd.*, 1986 CanLII 5 (SCC), [1986] 2 S.C.R. 573, at p. 583).

[121] How then does all this relate to the rights in s. 2(b) of the *Charter*? Because in dealing with municipal elections, we are dealing with the political processes of democratic government and it is undeniable that s. 2(b) protects "the political discourse fundamental to democracy" (*R. v. Sharpe*, 2001 SCC 2 (CanLII), [2001] 1 S.C.R. 45, at para. 23; see also *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712, at p. 765).

[122] In *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927, this Court held that one of the three underlying principles of the s. 2(b) right is that "participation in social and political decision-making is to be fostered and encouraged" (p. 976). Professors P. W. Hogg and W. K. Wright have referred to political expression as being "at the core of s. 2(b)", and curtailed under s. 1 "only in service of the most compelling governmental interest" (*Constitutional Law of Canada* (5th ed. Supp.), at p. 43-9).

[123] This brings us to the central issue in this appeal, namely, whether the timing of the legislation, in redrawing and reducing the number of wards from 47 to 25 in the middle of an election, infringed the expressive rights protected by s. 2(b) of the *Charter*.

[124] *Irwin Toy* established a two-part test for adjudicating freedom of expression claims. The first asks whether the activity is within the sphere of conduct protected by freedom of expression. If the activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of the guarantee. The second part asks whether the government action, in purpose or effect, interfered with freedom of expression.

[125] Dealing with the first part, the "activity" at the heart of this appeal is the expression of political views and the reciprocal political discourse among electoral participants during an election period, which engages the rights of both those seeking election and those deciding whom to elect. Political discourse undoubtedly has expressive content, and therefore, *prima facie* falls within the scope of the guarantee. Dickson C.J. in *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697, noted that

> *[t]he connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy.* Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons. Such open participation must involve to a substantial degree the notion that all persons are equally deserving of respect and dignity. [Emphasis added; pp. 763-64.]

[126] The second part of the test, namely, whether the state action interfered with the right in purpose or effect, is not, with respect, particularly complicated either. This Court's jurisprudence under s. 2(b) of the *Charter* has usually arisen in circumstances where the *purpose* of the government action was to restrict expression by regulating who can speak, what they can say or how their messages can be heard.[1] The case before us, on the other hand, deals with whether the *effect* of the legislation — redrawing the ward boundaries and cutting the number of wards nearly in half mid-election — was to interfere with these expressive activities.

[127] Freedom of expression does not simply protect the right to speak; it also protects the right to communicate with one another (R. Moon, *The Constitutional Protection of Freedom of Expression* (2000), at pp. 3-4). The words of Marshall J., in dissent, resonate with the reciprocal nature of expression:

> . . . the right to speak and hear — including the right to inform others and to be informed about public issues — are inextricably part of [the First Amendment]. The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin. But the coin itself is the process of thought and discussion. The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the "means indispensable to the discovery and spread of political truth." [Citations omitted.]
>
> (*Kleindienst v. Mandel*, 408 U.S. 753 (1972), at p. 775)

[128] In the electoral context, freedom of expression involves the rights of both candidates and voters to reciprocal deliberative engagement. The right to disseminate and receive information connected with elections has long been recognized as integral to the democratic principles underlying freedom of expression, and as a result, has attracted robust protection (see e.g. *Thomson Newspapers Co. v. Canada (Attorney General)*, 1998 CanLII 829 (SCC), [1998] 1 S.C.R. 877; *R. v. Bryan*, 2007 SCC 12 (CanLII), [2007] 1 S.C.R. 527; *Harper v. Canada (Attorney General)*, 2004 SCC 33 (CanLII), [2004] 1 S.C.R. 827; *B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, 2017 SCC 6 (CanLII), [2017] 1 S.C.R. 93; see also K. Roach and D. Schneiderman, "Freedom of Expression in Canada" (2013), 61 *S.C.L.R.* (2d) 429; J. Weinrib, "What is the Purpose of Freedom of Expression?" (2009), 67 *U.T. Fac. L. Rev.* 165).

[129] Political expression during an election period is always "taking place within and being constrained by the legal and institutional framework of an election" (Y. Dawood, "The Right to Vote and Freedom of Expression in Political Process Cases Under the Charter" (2021), 100 *S.C.L.R.* (2d) 105, at p. 131). In *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 S.C.R. 569, this Court explained that elections and referendums are "procedural structure[s] allowing for public discussion of political issues essential to governing", which serve to ensure "a reasonable opportunity to speak and be heard" and "the right of electors to be adequately informed of all the political positions advanced by the candidates and by the various political parties" (paras. 46-47).

[130] The Intervener, the David Asper Centre for Constitutional Rights, cogently explained how there are different aspects of an election, each of which requires protection:

> Election campaigns provide a special forum for voters and candidates to interact with each other. Citizens engage in the democratic process when they identify issues, test policy positions, bring incumbents to account, and assess new candidates' skills, policies and positions. All exercises of expression, at each and every stage of the electoral process — not only the final act of voting — must receive consistent and robust *Charter* protection. [Footnotes omitted.]
>
> (I.F., at para. 8)

[131] The democratic dialogue that occurs throughout an election period is crucial to the formation of public opinion and the ability to cast an informed vote. The process of deliberative engagement during an election period was aptly described by Professor Saul Zipkin:

> . . . the electoral process is the primary site in which the representative relationship is constructed. Indeed, "[c]ampaigns . . . are a main point —perhaps *the* main point — of contact between officials and the populace over matters of public policy." The period in which the putative representative goes before the voters for their approval is a time of creating that relationship, calling for special attention to the proper functioning of the democratic process at that time. As the representative relationship is historically a matter of constitutional concern, and is shaped by political activity and speech in the electoral setting, we might broaden the narrow focus on ballot-casting in our assessment of the democratic process. [Emphasis in original; footnotes omitted.]
>
> ("The Election Period and Regulation of the Democratic Process" (2010), 18 *Wm. & Mary Bill Rts. J.* 533, at pp. 545-46; see also A. Bhagwat and J. Weinstein, "Freedom of Expression and Democracy", in A. Stone and F. Schauer, eds., *The Oxford Handbook of Freedom of Speech* (2021), 82; N. Urbinati, "Free Speech as the Citizen's Right", in R. C. Post, *Citizens Divided: Campaign Finance Reform and the Constitution* (2014), 125.)

[132] An election is a process of allowing candidates and voters, as both speakers and listeners, to participate in reciprocal discourse so that their respective views can be fully expressed and heard. It is only through this process of free public discussion and debate that an informed vote can be cast, and ultimately, those elected can be responsive to the views of the electorate.

[133] State interference with individual and collective political expression in the context of an election strikes at the heart of the democratic values that freedom of expression seeks to protect, including "participation in social and political decision-making" (*Irwin Toy*, at p. 976). The *Irwin Toy* test is, as a result and as discussed later in these reasons, the appropriate legal framework for adjudicating the present claim of state interference with political expression during an election period.

[134] A stable election period is crucial to electoral fairness and meaningful political discourse. Redrawing the number, size and boundaries of electoral wards during this period destabilizes the process by "[i]nterrupting an election mid-campaign to change the rules of the game, including the electoral districts upon which candidates have crafted their campaigns and voters will have their preferences channelled" (M. Pal, "The Unwritten Principle of Democracy" (2019), 65 *McGill L.J.* 269, at p. 302).

[135] For three and a half months, candidates and voters engaged in political dialogue within the legal and institutional structure created in advance of the 2018 municipal election after years of research, public engagement and, finally, endorsement from the Ontario Municipal Board.

[136] After the *Act* came into force, candidates and voters found themselves in a suddenly altered electoral landscape. The *Act* eradicated nearly half of the active election campaigns, requiring those candidates to file a change of ward

notification form to continue in the race. The redrawing of ward boundaries meant that candidates needed to reach new voters with new priorities. Campaign materials such as lawn signs or advertisements for abolished wards "no longer play[ed] the function of electoral expression given the change to the underlying institutional context within which that expression [was] taking place" (Dawood, at p. 132). Voters who had received campaign information, learned about candidates' mandates and engaged with them based on the 47-ward structure had their democratic participation put into abeyance.

[137] The impact on some of the candidates and voters provides illuminating metaphors. One candidate, for example, Dyanoosh Youssefi, explained that she had been canvassing, e-mailing and organizing since the beginning of the campaign for 12-15 hours per day and all of her efforts had "focused on the concerns and the needs of the approximately 55,000 residents of Ward 14" (A.R., vol. XV, at p. 80). Ward 14 was abolished by the *Act*.

[138] Another candidate, Chiara Padovani, who had been campaigning in Ward 11, described the effect of combining Ward 11 and Ward 12 into a new Ward 5:

> Even before my registration as a candidate for the 2018 election, I engaged in substantial efforts to engage community members around important local issues in Ward 11 for over a one and a half year period such as flooding, road safety, and tenant rights. As a result, I . . . know where residents feel there should be additional speedbumps, crosswalks, and reduction in speed limits. I do not have this type of knowledge for any other ward, including Ward 12.
>
> . . .
>
> If I had notice of the change in ward boundaries prior to the commencement of the campaign, I would have been able to plan my ground strategy, and I would have attempted to gain a deeper knowledge of the local issues affecting residents in Ward 12 by actively canvassing in that ward. At this point, it will be impossible for me to carry out double the amount of canvassing that I have completed with the limited time remaining.
>
> (A.R., vol. XI, at pp. 15-16)

[139] Ever since the 47-ward structure was enacted in 2017, Chris Moise, a Black and openly gay candidate, had been organizing a campaign in Ward 25. He had decided to run in Ward 25 because it encompassed the Gay Village and Yorkville. These were communities he felt he could meaningfully serve based on his experiences as a School Board Trustee for the area, an LGBTQ activist, a former police officer with an interest in police relations with the Black and LGBTQ communities in the Village, and a resident and property owner in Yorkville. When the legislation abolished Ward 25, he dropped out of the race because he could not pivot his campaign on such short notice to either the new Ward 13, which excluded Yorkville where he lived, or the new Ward 11, which had only a very small geographical overlap with the previous Ward 25 and excluded the Village where he had the most meaningful connections and policy goals.

[140] Another candidate, Jennifer Hollett, explained the effect of the two week "legal limbo" (A.R., vol. XI, at p. 144) before the legislation received Royal Assent:

> Even after [the legislation] passed, my campaign team was uncertain what was going to happen to our campaign funds, and whether those funds could be transferred to a new campaign, or whether those funds could be refunded. It was only when regulations made pursuant to the Minister's powers in [the legislation] were passed that we received any direction. The effect of that uncertainty is that my team did not make any campaign expenditures after July 27.
>
> . . .
>
> The voters I speak with are confused. They understand that the rules have changed, but do not understand why those rules have changed and how. Instead of discussing municipal issues in the campaign, such as transit and safer streets, residents are asking about ward boundary changes and how they affect them. [pp. 145-46]

[141] Megann Wilson, another candidate and participant in the Women Win TO's training program, described the ensuing uncertainty vividly:

> Since . . . the imposition of a 25-ward model, I have struggled to engage with residents on my platform, or key issues and policies in the ward. Many residents are simply tired of the changing wards, and no longer know what ward they live in — and that is what I spend my time talking to residents about when I am canvassing. In my view, the level of confusion in my ward will make it more difficult for voters to make a good decision about what candidate to vote for since electors are not even aware of what ward they now live in let alone who the candidates are, given the sudden changes. Further, as a result of lack of communication to residents about the new ward boundaries, I have found myself having to fill that gap while canvassing residents — a significant distraction from the municipal issues I am trying to engage residents about.
>
> As a result of [the legislation] I am hindered in getting to the root of municipal issues affecting electors while I am canvassing. I am now spending most of my time with voters explaining the changes to the ward boundaries, and discussing the provincial politics that led to these sudden changes. Time with prospective voters is precious for all candidates and [the legislation] has interrupted my ability to engage directly with voters about my platform and my ideas for the ward and its residents.
>
> (A.R., vol. X, at p. 132)

[142] Since the *Act* did not reset campaign finance limits, new candidates entered the race with untapped campaign spending limits, while candidates who had already been campaigning lost what they had invested in now-defunct districts and continued in the race on a reduced budget. Some previously certified candidates stopped producing campaign materials entirely

due to the uncertainty surrounding the transfer of campaign funds and expenditures to a new campaign. Others could not afford to compete in the new and larger wards. As one campaign volunteer described:

> We do not know whether a donor who donated the maximum amount to a Ward 23 candidacy can now make a fresh donation to a Ward 13 candidacy. This is important because funds were spent on materials for the Ward 23 candidacy that are no longer useable. . . . It will likely not be possible to undertake sufficient fundraising to replace all of the items that are no longer usable, particularly given the limited amount of time in the campaign. Prior donors will likely not be able or willing to donate again, and it is unlikely we will be able to find enough new donors to produce sufficient new materials for a fresh campaign for a much larger ward area, particularly compared to more well-resourced incumbents.
>
> (A.R., vol. IX, at p. 125)

[143] Voters, too, were affected. One voter, Ish Aderonmu, explained the consequence of candidates dropping out of the race as "deeply disappointing . . . as an elector who has been working to advance one of these campaigns, expressing myself politically for the first time" (A.R., vol. IX, at p. 124). Another voter, who had endorsed a candidate who dropped out of the race, conveyed that "his own political expression has been compromised" and that "candidates remaining in the race are dealing with making major changes to their campaigns, and are not available to discuss [important] issues with him" (A.R., vol. IX, at p. 104).

[144] It is important to remember the timeline. Nominations opened on May 1, 2018, and closed on July 27, 2018. On the same day that nominations closed, the government announced that it intended to introduce new legislation, cutting the wards nearly in half and radically redrawing ward boundaries mid-election. No one knew what the impact of the new boundaries would be. Candidates did not know how the new electoral wards would affect their campaigns, and voters had no idea who their new candidates would be. All this after being in an ongoing electoral process for almost three months.

[145] The new legislation came into force two weeks later on August 14, 2018. By then, candidates had been campaigning and engaging with voters for 105 days in the existing 47 wards. Candidates who had developed mandates to respond to the specific needs and interests of their wards had their campaign efforts eradicated, along with their opportunity to meaningfully engage with the right voters on those issues. Voters who had formed opinions, been persuaded on issues, refined their preferences and expressed their views to their preferred representatives had their political expression thwarted. Some candidates persevered; others dropped out of the race. Volunteers quit, campaign endorsements were rescinded and confusion ensued.

[146] Nominations were extended to September 14, leaving only five weeks — from the date that nominations closed, solidifying which candidates were running and in what wards — for an election that was supposed to last nearly six months. More importantly, those five weeks were marred by the destabilizing impact of the timing of the legislation in the middle of an election that was technically 60 percent complete. The additional month for *new* candidates to seek nomination could not undo the damage and uncertainty that the change had created for candidates who had already been certified and voters who had already participated in three and a half months of deliberative engagement.

[147] The timing of the *Act*, in the middle of an ongoing election, breathed instability into the 2018 municipal election, undermining the ability of candidates and voters in their wards to meaningfully discuss and inform one another of their views on matters of local concern. For the remaining campaign period, candidates spent more time on doorsteps discussing the confusing state of affairs with voters than the relevant political issues. The timing of the legislation, by interfering with political discourse in the middle of an election, was a clear breach of s. 2(b) of the *Charter*.

[148] With respect, this leaves no role for the legal framework set out in *Baier v. Alberta*, 2007 SCC 31 (CanLII), [2007] 2 S.C.R. 673. It was designed to address underinclusive statutory regimes. The line of authority preceding *Baier* involved claims by individuals or groups seeking inclusion in an existing statutory regime, alleging that the absence of government support for them constituted a substantial interference with their exercise of a fundamental freedom.[2] The *Baier* framework was originally developed for an underinclusive labour relations regime in *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 (CanLII), [2001] 3 S.C.R. 1016, and then modified for an allegedly underinclusive school board trustee election regime in *Baier*. The framework specifically refers to "claims of underinclusion", "exclusion from a statutory regime" and "underinclusive state action" (*Dunmore*, at paras. 24-26; *Baier*, at paras. 27-30). It has no relevance to the legal or factual issues in this case.

[149] The *Baier* framework was, additionally, confined to its unique circumstances by this Court's subsequent decision in *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31 (CanLII), [2009] 2 S.C.R. 295. Writing for a 7-1 majority, Deschamps J. explained that *Baier* "summarized the criteria for identifying the limited circumstances in which s. 2(*b*) requires the government to extend an underinclusive means of, or 'platform' for, expression to a particular group or individual" (para. 30). She also cautioned against extending *Baier* beyond these narrow confines:

> . . . taken out of context, [*Baier*] could be construed as transforming many freedom of expression cases into "positive rights claims". Expression in public places invariably involves some form of government support or enablement. Streets, parks and other public places are often created or maintained by government legislation or action. If government support or enablement were all that was required to trigger a "positive rights analysis", it could be argued that a claim brought by demonstrators seeking access to a public park should be dealt with under the *Baier* analysis because to give effect to such a claim would require the government to enable the expression by providing the necessary resource (i.e., the place). But to argue this would be to misconstrue *Baier*.
>
> When the reasons in *Baier* are read as a whole, it is clear that "support or enablement" must be tied to a claim requiring the government to provide a particular means of expression. In *Baier*, a *distinction* was drawn between *placing an obligation on government to provide individuals with a particular platform for expression* and *protecting*

- *the underlying freedom of expression of those who are free to participate in expression on a platform* (para. 42). [Emphasis added; paras. 34-35.]

[150] The *Baier* test has no application to this appeal. As Deschamps J.'s full quote shows, it is clear that *Baier* only applies to claims "placing an obligation on government to provide individuals with a particular platform for expression". *Irwin Toy*, on the other hand, applies to claims that are about "protecting the underlying freedom of expression of those who are free to participate in expression on a platform", like the case before us.

[151] None of the claimants involved in this case was excluded from participating in the 2018 Toronto municipal election, nor did they claim that s. 2(b) of the *Charter* requires the Province to provide them with a municipal election so that they can express themselves. The s. 2(b) claim in this case is about government interference with the expressive rights that attach to an electoral process. This is precisely the kind of claim that is governed by the *Irwin Toy* framework, not *Baier* (*Baier*, at para. 42; *Greater Vancouver Transportation Authority*, at para. 35; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), [2010] 1 S.C.R. 815, at para. 31).

[152] In any event, the distinction between positive and negative rights is an unhelpful lens for adjudicating *Charter* claims. During nearly four decades of *Charter* litigation, this Court has recognized that rights and freedoms have both positive and negative dimensions. That recognition has led the Court to adopt a unified purposive approach to rights claims, whether the claim is about freedom *from* government interference in order to exercise a right, or the right *to* governmental action in order to get access to it.[3] To paraphrase Gertrude Stein, a right is a right is a right. The threshold does not vary with the nature of the claim to a right. Each right has its own definitional scope and is subject to the proportionality analysis under s. 1 of the *Charter*.

[153] All rights have positive dimensions since they exist within, and are enforced by, a positive state apparatus (S. Fredman, "Human Rights Transformed: Positive Duties and Positive Rights", [2006] *P.L.* 498, at p. 503; J. Rawls, *Political Liberalism* (exp. ed. 2005), at pp. 361-62; A. Sen, *The Idea of Justice* (2009), at p. 228). They also have negative dimensions because they sometimes require the state *not* to intervene. The distinction "is notoriously difficult to make . . . . Appropriate verbal manipulations can easily move most cases across the line" (S. F. Kreimer, "Allocational Sanctions: The Problem of Negative Rights in a Positive State" (1984), 132 *U. Pa. L. Rev.* 1293, at p. 1325).

[154] It is true that freedom of expression was once described by L'Heureux-Dubé J. in *Haig v. Canada*, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995, as prohibiting "gags" but not compelling "the distribution of megaphones" (p. 1035; see also K. Chan, "Constitutionalizing the Registered Charity Regime: Reflections on *Canada Without Poverty*" (2020), 6 *C.J.C.C.L.* 151, at p. 173). But even in *Haig* — a precursor to *Baier* — L'Heureux-Dubé J. acknowledged that this was an artificial distinction that is "not always clearly made, nor . . . always helpful" (p. 1039; see also *Native Women's Assn. of Canada v. Canada*, 1994 CanLII 27 (SCC), [1994] 3 S.C.R. 627, at pp. 666-68, per L'Heureux-Dubé J., concurring).

[155] There is no reason to superimpose onto our constitutional structure the additional hurdle of dividing rights into positive and negative ones for analytic purposes. Dividing the rights "baby" in half is not Solomonic wisdom, it is a jurisprudential sleight-of-hand that promotes confusion rather than rights protection.

[156] The purpose of the s. 2(b) right is not merely to restrain the government from interfering with expression, but also to cultivate public discourse "as an instrument of democratic government" (Hogg and Wright, at p. 43-8; see also Weinrib). Political discourse is at the heart of s. 2(b). Protecting the integrity of reciprocal political discourse among candidates and voters during an election period is therefore integral to s. 2(b)'s purpose. Elevating the legal threshold, as the majority proposes to do by applying *Baier*, adds a gratuitous hurdle, making it harder to prove a breach of this core aspect of s. 2(b) than other expressive activities. What should be applied instead is the foundational framework in *Irwin Toy*, which simply asks whether the activity in question falls within the scope of s. 2(b) and whether the government action, in purpose or effect, interfered with that expressive activity.

[157] Applying that framework, it is clear that the timing of the legislation violated s. 2(b) of the *Charter*. By radically redrawing electoral boundaries *during* an active election that was almost two-thirds complete, the legislation interfered with the rights of all participants in the electoral process to engage in meaningful reciprocal political discourse.

[158] This brings us to s. 1 of the *Charter*. The purpose of the s. 1 analysis is to determine whether the state can justify the *limitation* as "demonstrably justified in a free and democratic society" (*Charter*, s. 1; *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at para. 125). The limitation on s. 2(b) rights in this case was the timing of the legislative changes.

[159] But rather than explaining the purpose and justification for the *timing* of the changes, Ontario relied on the pressing and substantial objectives of the changes themselves as the basis for the s. 1 analysis, saying they were to achieve voter parity, improve efficiency and save costs. This was set out in the press release announcing the proposed legislation, which stated: "We ran on a commitment to restore accountability and trust, to reduce the size and cost of government, including an end to the culture of waste and mismanagement" (Office of the Premier, *Ontario's Government for the People Announces Reforms to Deliver Better Local Government*, July 27, 2018 (online)). And at the second reading of the legislation, the Minister of Municipal Affairs and Housing, the Hon. Steve Clark, declared:

> During the recent provincial election campaign, my caucus colleagues and I heard very strongly from Ontarians that they want us to respect those taxpayers' dollars. We heard very clearly from Ontarians that government is supposed to work for them. I think Ontario sent a very clear message on June 7 that they want a government that looks after those taxpayers' dollars, and that is exactly what we're doing with this bill.
>
> So, Speaker, I want to get into some of the details of the bill, and specifically I want to talk first about the city of Toronto. The bill, if passed, would reduce the size of Toronto city council to 25 councillors from the present 47 plus the mayor. This would give the taxpayers of Toronto a streamlined, more effective council that is ready to work quickly and puts the needs of everyday people first.

(Legislative Assembly of Ontario, *Official Report of Debates (Hansard)*, No. 14, 1st Sess., 42nd Parl., August 2, 2018, at p. 605)

[160] Leaving aside that voter parity was hardly mentioned in the legislative debates, this Court has never found voter parity to be the electoral lodestar, asserting, on the contrary, that the values of a free and democratic society "are better met by an electoral system that focuses on effective representation than by one that focuses on mathematical parity" (*Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 S.C.R. 158, at p. 188).

[161] But of overriding significance, the government offered no explanation, let alone a pressing and substantial one, for why the changes were made in the middle of an ongoing election. There was no hint of urgency, nor any overwhelming immediate policy need.

[162] In the absence of any evidence or explanation for the *timing* of the *Act*, no pressing and substantial objective exists for this limitation and it cannot, therefore, be justified in a free and democratic society. The legislation is, as a result, an unjustified breach of s. 2(b).

[163] While this dispenses with the merits of the appeal, the majority's observations circumscribing the scope and power of unwritten constitutional principles in a way that reads down this Court's binding jurisprudence warrants a response.

[164] In the *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217 ("*Secession Reference*"), the Court identified the unwritten constitutional principles of democracy, judicial independence, federalism, constitutionalism and the rule of law, and the protection of minorities. These principles are derived from the preamble to the *Constitution Act, 1867*, which describes our Constitution as "a Constitution similar in Principle to that of the United Kingdom" (*Secession Reference*, at paras. 44-49; see also P. C. Oliver, "'A Constitution Similar in Principle to That of the United Kingdom': The Preamble, Constitutional Principles, and a Sustainable Jurisprudence" (2019), 65 *McGill L.J.* 207).

[165] The precedential Constitution of the United Kingdom is not a written document, but is comprised of unwritten norms, Acts of Parliament, Crown prerogative, conventions, custom of Parliament, and judicial decisions, among other sources (Oliver, at p. 216; M. Rowe and N. Déplanche, "Canada's Unwritten Constitutional Order: Conventions and Structural Analysis" (2020), 98 *Can. Bar Rev.* 430, at p. 438). Our Constitution, as a result, "embraces unwritte[n] as well as written rules" (*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, 1997 CanLII 317 (SCC), [1997] 3 S.C.R. 3 ("*Provincial Judges Reference*"), at para. 92, per Lamer C.J.).

[166] It is notable that many Parliamentary systems, notwithstanding their different constitutional arrangements, have also recognized that unwritten constitutional principles have full legal force and can serve as substantive limitations on all branches of government.[4]

[167] Unwritten constitutional principles have been held to be the "lifeblood" of our Constitution (*Secession Reference*, at para. 51) and the "vital unstated assumptions upon which the text is based" (para. 49). They are so foundational that including them in the written text "might have appeared redundant, even silly, to the framers" (para. 62).

[168] Unwritten constitutional principles are not, as the majority suggests, merely "context" or "backdrop" to the text. On the contrary, unwritten principles are our Constitution's most basic normative commitments from which specific textual provisions derive. The specific written provisions are "elaborations of the underlying, unwritten, and organizing principles found in the preamble to the *Constitution Act, 1867*" (*Provincial Judges Reference*, at para. 107; see also *Switzman*, at p. 306, per Rand J.). Constitutional text emanates from underlying principles, but it will not always be exhaustive of those principles. In other words, the text is not exhaustive of our Constitution (*New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, 1993 CanLII 153 (SCC), [1993] 1 S.C.R. 319, at p. 378, per McLachlin J.).

[169] Apart from written provisions of the Constitution, principles deriving from the Constitution's basic structure may constrain government action. Those principles exist independently of and, as in the case of implied fundamental rights before the promulgation of the *Charter*, prior to the enactment of express constitutional provisions (see e.g. *Reference re Alberta Statutes*, per Duff C.J.; *Switzman*, at pp. 327-28, per Abbott J.; *OPSEU v. Ontario (Attorney General)*, 1987 CanLII 71 (SCC), [1987] 2 S.C.R. 2, at p. 57, per Beetz J.). As Beetz J. wrote for the majority in *OPSEU*, at p. 57, "quite apart from *Charter* considerations, the legislative bodies in this country must conform to these basic structural imperatives and can in no way override them":

> There is no doubt in my mind that the basic structure of our Constitution, as established by the *Constitution Act, 1867*, contemplates the existence of certain political institutions, including freely elected legislative bodies at the federal and provincial levels. In the words of Duff C.J. in *Reference re Alberta Statutes*, at p. 133, "such institutions derive their efficacy from the free public discussion of affairs . . . ." and, in those of Abbott J. in *Switzman v. Elbling*, at p. 328, neither a provincial legislature nor Parliament itself can "abrogate this right of discussion and debate". Speaking more generally, I hold that neither Parliament nor the provincial legislatures may enact legislation the effect of which would be to substantially interfere with the operation of this basic constitutional structure. [p. 57]

[170] This leads inescapably to the conclusion — supported by this Court's jurisprudence until today — that unwritten principles may be used to invalidate legislation if a case arises where legislation elides the reach of any express constitutional provision but is fundamentally at odds with our Constitution's "internal architecture" or "basic constitutional structure" (*Secession Reference*, at para. 50; *OPSEU*, at p. 57). This would undoubtedly be a rare case. But with respect, the majority's decision to foreclose the possibility that unwritten principles be used to invalidate legislation in all circumstances, when the issue on appeal does not require them to make such a sweeping statement, is imprudent. It not only contradicts our jurisprudence, it is fundamentally inconsistent with the case law confirming that unwritten constitutional principles can be used

to review legislation for constitutional compliance. Reviewing legislation for constitutional compliance means upholding, revising or rejecting it. Otherwise, there is no point to reviewing it.

[171] In the *Secession Reference*, a unanimous Court confirmed that "[u]nderlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have 'full legal force', as we described it in the *Patriation Reference*, *supra*, at p. 845), which constitute substantive limitations upon government action" (para. 54, quoting *Reference re Resolution to Amend the Constitution*, 1981 CanLII 25 (SCC), [1981] 1 S.C.R. 753 ("*Patriation Reference*"); see also *Babcock v. Canada (Attorney General)*, 2002 SCC 57 (CanLII), [2002] 3 S.C.R. 3, at para. 54, per McLachlin C.J.). That means they can be used to assess state action for constitutional compliance, which in turn can lead to endorsing, rejecting, limiting or expanding the acts of the executive or legislative branches of government. Again, with respect, we have never, to date, limited their role in the manner the majority proposes.

[172] The Court's reference to *Patriation Reference* dispels any doubt as to what it meant when it said that these principles have "full legal force". In the passage cited approvingly from the *Patriation Reference*, Martland and Ritchie JJ., dissenting in part, explained that unwritten constitutional principles "*have been* accorded full legal force in the sense of *being employed to strike down legislative enactments*" (p. 845 (emphasis added)). While Martland and Ritchie JJ. dissented in the result in the *Patriation Reference*, they cited judgments in support of the principle of federalism that remain good law and were viewed as necessary to "preserving the integrity of the federal structure" (p. 821), notably *Attorney-General for Canada v. Attorney-General for Ontario*, 1937 CanLII 362 (UK JCPC), [1937] A.C. 326 (P.C.), and *Attorney General of Nova Scotia v. Attorney General of Canada*, 1950 CanLII 26 (SCC), [1951] S.C.R. 31 (see also *Secession Reference*, at para. 81, citing *Reference re Authority of Parliament in relation to the Upper House*, 1979 CanLII 169 (SCC), [1980] 1 S.C.R. 54, at p. 71). In other words, structural doctrine helps identify what the unwritten principles *are*, it does not limit their role.

[173] This Court expressly endorsed the unwritten principles of democracy as the "baseline against which the framers of our Constitution, and subsequently, our elected representatives under it, have always operated" (*Secession Reference*, at para. 62); the rule of law as "a fundamental postulate of our constitutional structure" (*Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121, at p. 142, per Rand J.), "the very foundation of the *Charter*" (*B.C.G.E.U. v. British Columbia (Attorney General)*, 1988 CanLII 3 (SCC), [1988] 2 S.C.R. 214, at p. 229, per Dickson C.J.), and the source of judicial authority to override legislative intent "where giving effect to that intent is precluded by the rule of law" (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 23); federalism as "a foundational principle of the Canadian Constitution" (*References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, at para. 3, per Wagner C.J.); and judicial independence as a "constitutional imperative" in light of "the central place that courts hold within the Canadian system of government" (*Provincial Judges Reference*, at para. 108). And of course, the unwritten constitutional principle of the honour of the Crown has been affirmed by this Court and accorded full legal force (*Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53 (CanLII), [2010] 3 S.C.R. 103, at para. 42, per Binnie J.; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (CanLII), [2004] 3 S.C.R. 511, at para. 16, per McLachlin C.J.).

[174] In the *Provincial Judges Reference*, this Court relied, in part, on the unwritten constitutional principle of judicial independence to strike down legislative provisions in various provincial statutes. The issue was whether the principle of judicial independence restricts the manner and extent to which provincial legislatures can reduce the salaries of provincial court judges. While the principle of judicial independence finds expression in s. 11(d) of the *Charter*, which guarantees the right of an accused to an independent tribunal, and ss. 96 to 100 of the *Constitution Act, 1867*, which govern superior courts in the province, the unwritten principle of judicial independence was used to fill a gap in the written text to cover provincial courts in circumstances not covered by the express provisions. Writing for the majority, Lamer C.J. held that

> [j]udicial independence is an unwritten norm, recognized and affirmed by the preamble to the *Constitution Act, 1867*. In fact, it is in that preamble, which serves as the grand entrance hall to the castle of the Constitution, that the true source of our commitment to this foundational principle is located. [para. 109]

[175] In *Reference re Manitoba Language Rights*, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721, this Court invoked the unwritten principle of the rule of law to create a novel constitutional remedy — the suspended declaration of constitutional invalidity. The Court developed this remedy notwithstanding that the text of s. 52(1) of the *Constitution Act, 1982* states that unconstitutional laws are "of no force or effect" suggesting, when interpreted technically and in isolation from underlying constitutional principles, that declarations of invalidity can only be given immediate effect. As Karakatsanis J. wrote for the majority in *Ontario (Attorney General) v. G*, 2020 SCC 38, although s. 52(1) "does not explicitly provide the authority to suspend a declaration, in adjudicating constitutional issues, courts 'may have regard to unwritten postulates which form the very foundation of the Constitution of Canada'" (para. 120, quoting *Manitoba Language Rights*, at p. 752).

[176] Beyond the Reference context, in *MacMillan Bloedel Ltd. v. Simpson*, 1995 CanLII 57 (SCC), [1995] 4 S.C.R. 725, this Court used the rule of law principle to read down s. 47(2) of the *Young Offenders Act*, R.S.C. 1985, c. Y-1, which granted youth courts exclusive jurisdiction over contempt of court by a young person, so as not to oust the jurisdiction of superior courts. Writing for the majority, Lamer C.J. held that Parliament cannot remove the contempt power from a superior court without infringing "the principle of the rule of law recognized both in the preamble and in all our conventions of governance" (para. 41).

[177] And in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 (CanLII), [2014] 3 S.C.R. 31, this Court struck down a regulation imposing hearing fees that were found to deny people access to the courts based in part on the unwritten constitutional principle of the rule of law, and relatedly, access to justice.

[178] The majority's emphasis on the "primordial significance" of constitutional text is utterly inconsistent with this Court's repeated declarations that *unwritten* constitutional principles are the foundational organizing principles of our Constitution and have full legal force. Being unwritten means there is no text. They serve to give effect to the structure of our Constitution and "function as independent bases upon which to attack the validity of legislation . . . since they have the same legal status as the text" (R. Elliot, "References, Structural Argumentation and the Organizing Principles of Canada's Constitution" (2001), 80 *Can. Bar Rev.* 67, at p. 95; see also H.-R. Zhou, "Legal Principles, Constitutional Principles, and Judicial Review" (2019), 67 *Am. J. Comp. L.* 889, at p. 924). By definition, an emphasis on the words of the Constitution demotes unwritten principles to a diluted role. "Full legal force" means full legal force, independent of the written text.

[179] Unwritten constitutional principles do not only "give meaning and effect to constitutional text" and inform "the language chosen to articulate the specific right or freedom", they also assist in developing an evolutionary understanding of the rights and freedoms guaranteed in our Constitution, which this Court has long described as "a living tree capable of growth and expansion" (*Hunter v. Southam Inc.*, 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145, at p. 156, quoting *Edwards v. Attorney-General for Canada*, 1929 CanLII 438 (UK JCPC), [1930] A.C. 124 (P.C.), at p. 136). Unwritten constitutional principles are a key part of what makes the tree grow (*Secession Reference*, at para. 52; *Provincial Judges Reference*, at para. 106). This Court has never held that the interpretive role of unwritten constitutional principles is narrowly constrained by textualism.

[180] Unwritten constitutional principles are, additionally, substantive legal rules in their own right. As Lamer C.J. wrote in the *Provincial Judges Reference*:

> [The preamble] recognizes and affirms the basic principles which are the very source of the substantive provisions of the *Constitution Act, 1867*. As I have said above, those provisions merely elaborate those organizing principles in the institutional apparatus they create or contemplate. As such, *the preamble is not only a key to construing the express provisions of the Constitution Act, 1867, but also invites the use of those organizing principles to fill out gaps in the express terms of the constitutional scheme.* It is the means by which the underlying logic of the Act can be given *the force of law*. [Emphasis added; para. 95.]

[181] Professor Mark D. Walters effectively explained why the role of unwritten constitutional principles has not been limited as the majority suggests:

> The relationship between unwritten and written constitutional law in Canada may be conceived in different ways. At one point, Chief Justice Antonio Lamer observed that the role of unwritten principles is "to fill out gaps in the express terms of the constitutional scheme." This statement might suggest that judges are just reading between the lines in order to make the text complete. Or, to use another metaphor, judges are constructing bridges over the waters that separate islands of constitutional text, creating a unified and useable surface.
>
> *But the gap-filling and bridge metaphors do not capture fully the theory of unwritten constitutionalism as it has developed in the Canadian cases. . . .* We must alter the bridge metaphor accordingly: The textual islands are merely the exposed parts of a vast seabed visible beneath the surrounding waters, and the bridges constructed by judges between these islands are actually causeways moulded from natural materials brought to the surface from this single underlying foundation. *The constitutional text is not just supplemented by unwritten principles; it rests upon them.* [Emphasis added; footnote omitted.]
>
> ("Written Constitutions and Unwritten Constitutionalism", in G. Huscroft, ed., *Expounding the Constitution: Essays in Constitutional Theory* (2008 (reprinted 2010)), 245, at pp. 264-65)

[182] It is also difficult to understand the need for the majority's conclusion that using unwritten constitutional principles to strike down legislation would circumvent the legislative override power in s. 33 of the *Charter*. This question is not directly before us.

[183] Finally, I see no merit to the majority's argument that courts cannot declare legislation invalid on the basis of unwritten constitutional principles because s. 52(1) of the *Constitution Act, 1982* only applies to written text. This argument extinguishes the entire jurisprudence establishing that unwritten principles have full legal force. Section 52(1) provides that "any law that is inconsistent with the *provisions* of the Constitution is . . . of no force or effect". The majority's reading of s. 52(1), like much of the rest of its analysis, is a highly technical exegetical exercise designed to overturn our binding authority establishing that unwritten constitutional principles are a full constitutional partner with the text, including for the purposes of s. 52 (*New Brunswick Broadcasting Co.*, at pp. 375-78; *Manitoba Language Rights*, at p. 752; *Ontario (Attorney General) v. G*, at para. 120).

[184] It is true that in *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 (CanLII), [2005] 2 S.C.R. 473, the Court questioned whether the rule of law could be used to invalidate legislation based on its content, but this was based on the specific contours of one unwritten principle, not unwritten principles in general. The Court did not constrain the reach of judicial independence, the other unwritten constitutional principle raised in that case. As Major J. explained in describing the limits of the content of the rule of law:

> . . . it is difficult to conceive of how the rule of law could be used as a basis for invalidating legislation such as the Act based on its content. That is because none of the principles that the rule of law embraces speak directly to the terms of legislation. The first principle requires that legislation be applied to all those, including government officials, to whom it, by its terms, applies. The second principle means that legislation must exist. And the third principle, which overlaps somewhat with the first and second, requires that state officials' actions be legally founded. See R. Elliot, "References, Structural Argumentation and the Organizing Principles of Canada's Constitution" (2001), 80 *Can. Bar Rev.* 67, at pp. 114-15. [para. 59]

Never, however, has this Court, until now, foreclosed the possibility of *all* unwritten constitutional principles ever invalidating legislation.

[185] The inevitable consequence of this Court's decades-long recognition that unwritten constitutional principles have "full legal force" and "constitute substantive limitations" on all branches of government is that, in an appropriate case, they may well continue to serve, as they have done in the past, as the basis for declaring legislation unconstitutional (*Secession Reference*, at para. 54; see also Elliot, at p. 95; (A.) J. Johnson, "The *Judges Reference* and the *Secession Reference* at Twenty: Reassessing the Supreme Court of Canada's Unfinished Unwritten Constitutional Principles Project" (2019), 56 *Alta. L. Rev.* 1077, at p. 1082; P. Bobbitt, *Constitutional Fate: Theory of the Constitution* (1982)). There is no need, as a result, to constrain

the role of unwritten constitutional principles and newly declare that their full legal force does not include the ability, in appropriate circumstances, to declare legislation to be constitutionally invalid.

[186] I would allow the appeal and restore Belobaba J.'s declaration that the timing of the *Act* unjustifiably infringed s. 2(b) of the *Charter*.

Appeal dismissed, ABELLA, KARAKATSANIS, MARTIN *and* KASIRER JJ. *dissenting.*

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Solicitors for the intervener the International Commission of Jurists (Canada): Gowling WLG (Canada), Ottawa.

Solicitor for the intervener the Federation of Canadian Municipalities: Federation of Canadian Municipalities, Ottawa.

Solicitor for the intervener the Durham Community Legal Clinic: Durham Community Legal Clinic, Oshawa.

Solicitor for the intervener the Centre for Free Expression at Ryerson University: Borden Ladner Gervais, Toronto.

Solicitors for the intervener the Canadian Civil Liberties Association: Goldblatt Partners, Toronto.

Solicitors for the interveners Art Eggleton, Barbara Hall, David Miller and John Sewell: Goldblatt Partners, Toronto.

Solicitors for the intervener the David Asper Centre for Constitutional Rights: St. Lawrence Barristers, Toronto.

Solicitors for the intervener Progress Toronto: Paliare Roland Rosenberg Rothstein, Toronto.

Solicitors for the interveners the Métis Nation of Ontario and the Métis Nation of Alberta: Pape Salter Teillet, Toronto.

Solicitor for the intervener Fair Voting British Columbia: Nicolas M. Rouleau, Toronto.

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[1] This Court's jurisprudence has involved, for example, restrictions on: **publication** (*Edmonton Journal v. Alberta (Attorney General)*, 1989 CanLII 20 (SCC), [1989] 2 S.C.R. 1326; *Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835; *Thomson Newspapers Co. v. Canada (Attorney General)*, 1998 CanLII 829 (SCC), [1998] 1 S.C.R. 877; *R. v. Bryan*, 2007 SCC 12 (CanLII), [2007] 1 S.C.R. 527); **obscene content** (*R. v. Butler*, 1992 CanLII 124 (SCC), [1992] 1 S.C.R. 452; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69 (CanLII), [2000] 2 S.C.R. 1120); **advertising** (*Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927; *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31 (CanLII), [2009] 2 S.C.R. 295); **language** (*Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712; *Devine v. Quebec (Attorney General)*, 1988 CanLII 20 (SCC), [1988] 2 S.C.R. 790); **harmful content** (*R. v. Sharpe*, 2001 SCC 2 (CanLII), [2001] 1 S.C.R. 45; *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697); **manner or place of expression** (*Committee for the Commonwealth of Canada v. Canada*, 1991 CanLII 119 (SCC), [1991] 1 S.C.R. 139; *Ramsden v. Peterborough (City)*, 1993 CanLII 60 (SCC), [1993] 2 S.C.R. 1084; *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 (CanLII), [2005] 3 S.C.R. 141); **who can participate in a statutory platform for expression** (*Haig v. Canada*, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995; *Native Women's Assn. of Canada v. Canada*, 1994 CanLII 27 (SCC), [1994] 3 S.C.R. 627; *Baier v. Alberta*, 2007 SCC 31 (CanLII), [2007] 2 S.C.R. 673); **voluntary expression** (such as mandatory letters of reference or public health warnings) (*Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038; *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 S.C.R. 199; *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30 (CanLII), [2007] 2 S.C.R. 610); **expenditures on expression** (*Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 S.C.R. 569; *Harper v. Canada (Attorney General)*, 2004 SCC 33 (CanLII), [2004] 1 S.C.R. 827); or **access to information** (such as court proceedings or government documents) (*Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, 1996 CanLII 184 (SCC), [1996] 3 S.C.R. 480; *Vancouver Sun (Re)*,

2004 SCC 43 (CanLII), [2004] 2 S.C.R. 332; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), [2010] 1 S.C.R. 815). This case does not fall into any of these categories.

[2] *Haig v. Canada*, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995 (s. 2(b) challenge to exclusion of Quebec resident from federal referendum); *Native Women's Assn. of Canada v. Canada*, 1994 CanLII 27 (SCC), [1994] 3 S.C.R. 627 (s. 2(b) challenge to exclusion of Native Women's Association of Canada from federal funding to present on Charlottetown Accord); *Delisle v. Canada (Deputy Attorney General)*, 1999 CanLII 649 (SCC), [1999] 2 S.C.R. 989, overruled by *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (CanLII), [2015] 1 S.C.R. 3 (s. 2(d) challenge to exclusion of RCMP members from labour relations legislation); *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 (CanLII), [2001] 3 S.C.R. 1016 (s. 2(d) challenge to exclusion of agricultural workers from labour relations legislation).

[3] The same legal standard has applied to claims with respect to: **freedom of association under s. 2(d)** (*Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391 (right to collective bargaining); *Ontario (Attorney General) v. Fraser*, [2011] 2 S.C.R. 3 (right to good faith bargaining); *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (CanLII), [2015] 1 S.C.R. 3 (right to statutory protections for collective bargaining)); **the right to life, liberty and security of the person under s. 7** (*Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), [2015] 1 S.C.R. 331 (physician-assisted dying); *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 S.C.R. 30 (abortion); *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (CanLII), [2011] 3 S.C.R. 134 (safe injection facility)); and **equality under s. 15** (*Eldridge v. British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 S.C.R. 624 (interpretation services for deaf hospital patients); *Vriend v. Alberta*, 1998 CanLII 816 (SCC), [1998] 1 S.C.R. 493 (legislative protection against discrimination on the basis of sexual orientation)), to name a few examples.

[4] See also other jurisdictions in which unwritten constitutional principles have been accorded full legal force in the sense of being employed to invalidate legislative or executive action: **United Kingdom** (*R. (on the application of Miller) v. Prime Minister*, [2019] UKSC 41, [2020] A.C. 373 (parliamentary sovereignty and accountability); *R. (on the application of Jackson) v. Attorney General*, [2005] UKHL 56, [2006] 1 A.C. 262, at para. 102, per Lord Steyn (judicial independence); *R. (Privacy International) v. Investigatory Powers Tribunal*, [2019] UKSC 22, [2020] A.C. 491, at paras. 100 and 144, per Lord Carnwath (judicial independence and rule of law); *AXA General Insurance Ltd. v. HM Advocate*, [2011] UKSC 46, [2012] 1 A.C. 868, at para. 51, per Lord Hope (judicial independence and rule of law)); **Australia** (*Brandy v. Human Rights and Equal Opportunity Commission* (1995), 183 C.L.R. 245 (H.C.) (judicial independence); *Kable v. Director of Public Prosecutions (NSW)* (1996), 189 C.L.R. 51 (H.C.) (federalism); *Re Residential Tenancies Tribunal (NSW); Ex parte Defence Housing Authority* (1997), 190 C.L.R. 410 (H.C.) (federalism); *Lange v. Australian Broadcasting Corporation* (1997), 189 C.L.R. 520 (H.C.) (freedom of political communication); *Roach v. Electoral Commissioner*, [2007] HCA 43, 233 C.L.R. 162 (the right to vote)); **South Africa** (*South African Association of Personal Injury Lawyers v. Heath*, [2000] ZACC 22, 2001 (1) S.A. 883 (separation of powers); *Fedsure Life Assurance Ltd. v. Greater Johannesburg Transitional Metropolitan Council*, [1998] ZACC 17, 1999 (1) S.A. 374, at para. 58 (legality)); **Germany** (*Elfes Case*, BVerfG, 1 BvR 253/56, Decision of January 16, 1957 (rule of law and social welfare state)); and **India** (*Kesavananda v. State of Kerala*, A.I.R. 1973 S.C. 1461, at pp. 1899-1900 (secularism, democracy and individual freedom)).

TAB 2

Docket: 2013-3473(GST)G

BETWEEN:

UNIVERSITY OF CALGARY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on October 29 and 30, 2014, at Calgary, Alberta.
Submissions received from the Respondent on April 2, 2015 and from the Appellant on April 6, 2015.

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellant:	Justin Kutyan Carla Hanneman
Counsel for the Respondent:	Ronald MacPhee Jack Warren

JUDGMENT

The appeals from the reassessments made under the *Excise Tax Act* and dated September 30, 2011, January 24, 2012, February 2, 2012 and April 20, 2012 are allowed with costs. The reassessments are referred back to the Minister for reconsideration and reassessment on the basis that, during the relevant periods, the Appellant used the property identified as Plan 1935JK to the extent of 81.2% in its commercial activities, the property identified as Plan 859JK to the extent of 41.33% in its commercial activities and the property identified as Plan 9410341 to the extent of 25.86% in its commercial activities. The parties have thirty days from the date of this judgment to make representations with respect to the amount of costs that the Court should award to the Appellant. If no submissions are received, costs shall be awarded to the Appellant as set out in the Tariff.

Signed at Ottawa, Canada, this 11th day of December 2015.

"S. D'Arcy"

D'Arcy J.

Citation: 2015 TCC 321
Date: 2015 12 11
Docket: 2013-3473(GST)G

BETWEEN:

UNIVERSITY OF CALGARY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

D'Arcy J.

I. Issue

[1] The issue in these appeals is the extent to which the Appellant acquired and subsequently used certain of its land in its GST commercial activities.[1] This issue requires the Court to address the application of the general input tax credit rule in subsection 169(1), the "fair and reasonable" rule in subsection 141.01(5), and the input tax credit apportionment rules in subsections 141.01(2) and (3) of the GST Act.

II. Interrelationship with the University of Alberta's Appeals

[2] These appeals and appeals by the University of Alberta[2] were scheduled to be heard over the same three-day period. The appeals of both Appellants raise the same issue.

[3] Counsel for the Appellant suggested, at the commencement of the hearing of the appeals, that the Court hear the appeals of the University of Calgary on common evidence with the appeals of the University of Alberta. However, he asked that the Court issue two separate judgments.

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1 As that term is defined in subsection 123(1) of Part IX of the *Excise Tax Act* (the "GST Act" or the "Act".) Unless otherwise stated, all statutory references are to the provisions of the GST Act.

2 *University of Alberta* v. *The Queen*, 2013-3740(GST)G.

[4] Counsel for the Respondent was willing, for efficiency purposes, to proceed in such a manner but had some concerns since each Appellant would be presenting different facts to support its claim for input tax credits.

[5] I was not willing to follow counsel for the Appellant's suggestion for the simple reason that the evidence was not common to both parties. Although the Appellants carried on very similar, if not identical businesses, they engaged in different activities in the course of their respective businesses. These activities determine their entitlement to input tax credits.

[6] However, I did recognize that the two Appellants used very similar methodologies to determine their entitlement to input tax credits. In addition, counsel for the Appellant informed the Court that, while there was no evidence that was common to both appellants, there was "quite a bit of parallel in the evidence".

[7] As a result, the appeals of both Appellants proceeded as follows:

- The Court called the University of Calgary appeals and both parties presented their evidence.
- The Court adjourned these appeals.
- The Court called the University of Alberta appeals and both parties presented their evidence.
- The Court called the appeals of both Appellants, allowing the parties to present a single argument for the appeals of both Appellants.

III. **Summary of Facts**

[8] I heard from two witnesses. Mr. Bradley Klaiber testified on behalf of the Appellant and Mr. Robert Kinzner testified on behalf of the Respondent.

[9] Mr. Klaiber, a chartered accountant, is the Director of Financial Reporting for the Appellant. Mr. Kinzner, a certified management accountant, is a CRA auditor.

[10] I found both witnesses to be credible. However, as I will discuss, I do not accept Mr. Kinzner's application of subsections 141.01(2) and (3).

[11] The University of Calgary is a public research university located in Calgary, Alberta, with 31,500 students and 4,800 faculty and staff. Founded in 1966, the university has 14 faculties and more than 85 research institutes and centres.[3]

[12] The Appellant owns several parcels of real property in Calgary, which collectively constitute its land and premises.[4] Mr. Klaiber described the main campus of the university as follows: "It's sort of like a mini city . . . within Calgary where a number of people come to live, work, study, complete research."[5]

[13] Notwithstanding that the campus is predominantly used for educational purposes, the University of Calgary also provides various commercial and non-educational services to students, staff and the public.[6]

[14] The parties note the following in the PASF I at paragraph 2,

> At all relevant times, the University of Calgary was a "registrant", a "public service body" and a "public institution" as defined in subsection 123(1) of the Act. For the purposes of the Act, the University of Calgary makes both taxable and exempt supplies in the course of conducting its activities.

[15] The fact that the Appellant is a public service body means that it is also a public sector body,[7] which is relevant for the purposes of the section 206 change-in-use rules.

[16] These appeals involve three parcels of land owned by the Appellant. I will refer to the three parcels of land and the buildings located on the lands as, collectively, the "**U of C Properties**". The parties, at paragraph 4 of the PASF I, describe each of the three parcels as follows:

- "Plan 1935JK ("U of C Child Development Centre")"; I will refer to this parcel of land and the buildings located on the land as the "**CDC**".
- "Plan 859JK ("U of C Main Campus")"; I will refer to this parcel of land and the buildings located on the land as the "**Main Campus**".
- "Plan 9410341 ("U of C South Campus")"; I will refer to this parcel of land and the buildings located on the land as the "**South Campus**".

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3 Statement of Partially Agreed Facts (Background Information) ("PASF I"), paragraph 1; Transcript, page 16, testimony of Mr. Klaiber.

4 PASF I, paragraph 3.

5 Transcript, page 16, testimony of Mr. Klaiber.

6 PASF I, paragraph 3.

7 Subsection 123(1), definition of public sector body.

[17] The Appellant made an election, effective February 1, 2006, under section 211 of the Act in respect of each of the U of C Properties.[8] I will discuss the effect of the elections shortly. The main consequence of the elections, for the purposes of these appeals, is that the Appellant was deemed to have received on February 1, 2006 a taxable supply of each of the properties by way of sale and to have paid on that day tax in respect of each of the deemed supplies.[9]

[18] Subsequent to February 1, 2006, the Appellant made improvements to the U of C Properties. The tax in respect of the improvements to the U of C Properties appears to have been paid or to have become payable between February 2006 and March 2009.[10]

[19] As a result of the deemed acquisition of the U of C Properties and the subsequent improvements to the properties, the Appellant is required to determine, for input tax credit purposes, the extent to which it acquired the U of C Properties, additions to the properties or improvements to the properties for use in its GST commercial activities.

[20] The Appellant developed a methodology to determine the extent to which it used the U of C Properties in its commercial activities (the "Appellant's Original Methodology"). The parties provided the following general description of the Appellant's Original Methodology in the PASF I:

> For each of the U of C Properties, the University of Calgary took into account all of the structures on the property. It identified within a particular structure all of the space (measured by square meters) that was directly used in making taxable supplies for consideration, exempt supplies, and a mix of the two activities.[11]
>
> . . .
>
> The University of Calgary then developed a ratio (expressed as a percentage) between taxable and exempt activities within each structure and applied it to the mixed activities within the structure (*i.e.*, internal common areas). The University of Calgary then aggregated all of the activities from all the structures on the

8 PASF I, paragraph 4.

9 Paragraphs 5 and 6 of the PASF I attempt to describe the consequences to the Appellant under the Act of making the elections. This is not the purpose of an agreed statement of facts. An agreed statement of facts should deal only with facts, not the law. It is for the Court, not the parties, to determine the law and how it applies to the fact situation before the Court.

10 See Exhibit R3, page 373; Exhibit R4, pages 443-444; Exhibit R5, pages 533-534; Transcript, pages 163-164, testimony of Mr. Kinzner.

11 PASF I, paragraph 8.

> property to determine a ratio (expressed as a percentage) to be applied to the remaining space on the property (*i.e.*, external common areas).[12]

[21] The Appellant, using this methodology, filed numerous GST returns in which it claimed input tax credits in respect of the U of C Properties on the basis that, during the relevant periods, the following percentages represented the extent to which it acquired each property for use, or used each property, in the course of its commercial activities:

- CDC – 85.77%
- Main Campus 43.2%
- South Campus 27.52%[13]

[22] The Minister reassessed on the basis that three adjustments are required to the Appellant's Original Methodology in order for the methodology to comply with the provisions of the GST Act, particularly section 141.01.

[23] First, the Minister disagrees with the Appellant's determination of the amount of space in specific buildings that the Appellant used directly in the making of taxable supplies for consideration, directly in the making of exempt supplies, and indirectly to make both taxable and exempt supplies. Second, she disagrees with the Appellant's treatment of the external common areas on the U of C Properties (the "External Common Areas"). Third, she believes that the Appellant's Original Methodology should be amended to add a weighting or index factor.

[24] The Appellant accepts the changes proposed by the Minister with respect to the allocation of space within specific buildings. The PASF I states the following:

> Subsequent to issuance of the Reassessments under appeal, the Appellant agreed to some of the adjustments proposed by the Minister (in applying the Appellant's methodology). As a result, the Appellant now claims the extent to which each U of C Property was being used in commercial activities is as follows:[14]

Properties	Extent of Use
Child Development Centre	81.20%

[12] PASF I, paragraph 10.
[13] PASF I, paragraph 11.
[14] PASF I, paragraph 19.

Main Campus	41.33%
South Campus	25.86%

[25] I will refer to the methodology used by the Appellant to determine these percentages as the "**Appellant's Final Methodology**" and the resulting percentages as the "**Appellant's Final Percentages**".

[26] The Appellant does not accept the Minister's treatment of the External Common Areas or the addition of an indexing factor.

[27] The parties provided in the PASF I, the following general description of the methodology developed by the Respondent (the "**Respondent's Methodology**"):

> The Minister takes the position that the entirety of each of the U of C Properties must be considered in calculating the extent of use in commercial activity. The Minister takes the position that the outdoor areas (other than parking areas) such as green space, roadways, walkways, and landscaped areas were not for use in making taxable supplies for consideration. Based on this view, the Minister takes the position that the U of C Method must be applied in a manner that includes these outdoor areas when calculating the extent of use in the commercial activity of the appellant.
>
> The Minister takes the position that a weighting or index system is required to take into account the different types of space on each of the U of C Properties. The Minister has identified the replacement costs of the various structures on each of the U of C Properties and uses that information to apply an indexing factor to the U of C Properties.[15]

[28] The Minister, using the Respondent's Methodology and after making adjustments to the Appellant's original calculation of the use of space within specific buildings, determined the extent to which each of the U of C Properties was used during the relevant period in commercial activities, as follows (the "**Respondent's Percentages**"):

- CDC – 69.91%
- Main Campus – 18.06%
- South Campus – 11.93%[16]

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15 PASF I, paragraphs 13, 14.

16 PASF I, paragraph 15.

[29] This resulted in the Minister assessing the Appellant to increase its net tax by approximately $3.9 million for the relevant periods.[17]

[30] Although they disagree on the treatment of the External Common Areas and the addition of a weighting or indexing factor to the Appellant's Final Methodology, the parties do agree on the actual use of the space within each building situated on the U of C Properties. Specifically, the Appellant's Final Methodology and the Respondent's Methodology use the same determination of the extent (measured in square meters) to which the Appellant used each building directly in the making of taxable supplies for consideration, directly in the making of exempt supplies and indirectly in the making of both taxable and exempt supplies.[18]

IV. **The Appellant's Methodology**

[31] Mr. Klaiber explained the Appellant's Original and Final Methodologies to the Court.

[32] As noted in the PASF I, the Appellant identified within a particular structure[19] situated on the U of C Properties all of the space (measured in square meters) that was used directly in the making of taxable supplies for consideration, directly in the making of exempt supplies and indirectly in the making of both taxable and exempt supplies.[20]

[33] Mr. Klaiber explained the process used by the Appellant to identify the use of particular space.[21] He emphasized that the Appellant tried to use "readily available information".

[34] His department first worked with the Appellant's Teams and Facilities Maintenance and Development group. This group has a database containing information relating to the space on campus within the Appellant's structures and buildings. This database contains detailed information for each building identifying each room in the building, the physical size of the room, the name of the room and the Appellant's use of the room.

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17 See PASF I, Exhibit F.
18 PASF I, paragraphs 8 and 9.
19 Including the parking lots.
20 PASF I, paragraph 8.
21 Transcript, pages 30-54, testimony of Mr. Klaiber.

[35] Mr. Klaiber and his staff reviewed all of the space on each floor of each building and allocated the space in each room and each common area to use directly in the making of exempt supplies, use directly in the making of taxable supplies for consideration or indirect use in making both exempt and taxable supplies (the "**Internal Common Areas**").[22]

[36] He noted that space used directly in the making of exempt supplies included classrooms and research labs that were not leased to third parties. Space used directly in the making of taxable supplies included food establishments, bookstores, parking lots and space leased to third parties.

[37] The Internal Common Areas included utility rooms, corridors and hallways, washrooms, etc. He explained that this space supported the "directly attributable activities" in the specific building.

[38] Exhibits A3, A4, and A5 summarize the Appellant's calculations for each room in each building on the three U of C Properties. These exhibits contain 270 pages of calculations for thousands of rooms in 90 structures (including parking lots) comprising approximately 898,000 square meters of space.

[39] The Appellant then aggregated the amounts calculated for the structures located on the U of C Properties. Specifically, for each of the three pieces of land comprising the U of C Properties, it calculated the square meters it used directly in making taxable supplies for consideration, the square meters it used directly in making exempt supplies and the square meters that comprised the Internal Common Areas.[23]

[40] At some point in time, the Appellant reviewed these calculations with the CRA and accepted certain adjustments proposed by the CRA with respect to the Appellant's determination of the use of the space within the structures. Exhibits B, C, and D to the PASF I contain the parties' agreed allocation of space in each of the structures on the U of C Properties.[24]

[41] Exhibit B to the PASF I contains the numbers agreed upon by the Appellant and the Respondent for the CDC land. The Appellant identifies seven structures on the CDC land. Exhibit B shows the total of the room-by-room calculation for each structure on the CDC land broken down according to the square meters used

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22 Mr. Klaiber referred to the Internal Common Areas as the mixed-use space.
23 Transcript, page 34, testimony of Mr. Klaiber.
24 PASF I, footnote 1. See also Transcript, pages 45, 96 and 102.

directly in the making of taxable supplies for consideration, the square meters used directly in the making of exempt supplies and the square meters used indirectly in the making of both taxable and exempt supplies (the Internal Common Areas).

[42] The square meters for the seven structures are then totalled, with the following result:

- The Appellant used 30,261.78 square meters directly in the making of taxable supplies for consideration.
- The Appellant used 7,004.81 square meters directly in the making of exempt supplies.
- The Appellant used 1,582.81 square meters indirectly in the making of both taxable and exempt supplies.

[43] Exhibit C contains the same calculation for the structures on the Main Campus. The Appellant identifies seventy-seven structures on the Main Campus. The totals of the calculations for the seventy-seven structures are as follows:

- The Appellant used 258,842 square meters directly in the making of taxable supplies for consideration.
- The Appellant used 367,485 square meters directly in the making of exempt supplies.
- The Appellant used 27,863 square meters indirectly in the making of both taxable and exempt supplies.

[44] Exhibit D contains the same calculation for the structures on the South Campus. The Appellant identifies six structures on the South Campus. The totals of the calculations for the six structures are the following:

- The Appellant used 53,001.30 square meters directly in the making of taxable supplies for consideration.
- The Appellant used 151,941.60 square meters directly in the making of exempt supplies.

[45] It is the Appellant's position that the extent to which a specific piece of land was used in commercial activities is determined by taking the total square meters of all of the structures on the specific piece of land that were used directly in the making of taxable supplies for consideration and dividing it by the total of the square meters of such land used directly in the making of taxable supplies for consideration and the square meters of such land used directly in the making of

exempt supplies. Using the numbers in Exhibits B, C and D results in the following (the Appellant's Final Percentages), which the Appellant argues represents the extent to which each piece of land was used in commercial activities:

- CDC - 30,261.78/(30,261.78+7,004.81) = 81.20%[25]
- Main Campus - 258,842/(258,842+367,485) = 41.33%[26]
- South Campus - 53,001.30/(53,001.30+151,941.60) = 25.86%[27]

[46] It is the Appellant's position that it is entitled to the input tax credits resulting from the application of the Appellant's Final Percentages to the GST paid or deemed to have been paid in the relevant reporting periods, as set out in Exhibit A to the PASF I.

[47] For example, Exhibit A shows that the parties have agreed that the GST in respect of which the Appellant is entitled to claim an input tax credit as of August 2007 was $543,700. It is the Appellant's position that it was entitled to claim an input tax credit equal to 81.2% of this amount.

[48] The Appellant's Final Methodology assumes that the Appellant acquired all areas of the land on the U of C Properties for the purpose of making either taxable or exempt supplies.

V. **The Respondent's Methodology**

[49] The Respondent does not accept the Appellant's methodology. She does not believe it complies with section 141.01. She proposes a methodology developed by the CRA that starts with the Appellant's calculations and makes two substantial adjustments. First, it treats the External Common Areas as space that was "not for use in making taxable supplies for consideration".[28] Second, it applies a weighting or index factor based upon the replacement cost of the various structures on the U of C Properties.

[50] Mr. Kinzner explained the CRA's methodology to the Court.

[51] The CRA started with the numbers contained in Exhibits B, C, and D of the PASF I for each structure on the U of C Properties. These are the numbers the

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25 PASF I, paragraph 19; Transcript, page 79, testimony of Mr. Klaiber.
26 PASF I, paragraph 19; Transcript, page 103, testimony of Mr. Klaiber.
27 PASF I, paragraph 19; Transcript, page 121, testimony of Mr. Klaiber.
28 PASF I, paragraph 13.

Appellant used, in its Final Methodology, to determine the extent to which it used the U of C Properties in commercial activities. The numbers represent the square meters in each structure used directly in the making of taxable supplies for consideration, the square meters used directly in the making of exempt supplies, and the square meters used indirectly in making both taxable and exempt supplies.[29]

[52] The CRA then adjusted the calculations in each of Exhibits B, C and D of the PASF I on the assumption that the Appellant did not use the External Common Areas indirectly to make taxable and exempt supplies.[30] As noted in Exhibits B, C, and D respectively of the PASF I, the square meters of the External Common Areas for each parcel of land are as follows:

- 168,420 square meters for the External Common Areas on the CDC land.
- 567,183 square meters for the External Common Areas on the Main Campus.
- 31,614 square meters for the External Common Areas on the South Campus.

[53] Mr. Kinzner testified that the Appellant used the External Common Areas on the CDC Lands and the Main Campus in "exempt" activities.[31] He also testified that the Appellant used 22,795 of the square meters making up the External Common Areas located on the South Campus in "exempt" activities. The CRA determined that the Appellant did not use the remaining 8,819 square meters of the External Common Areas on the South Campus in "exempt" activities, but rather leased the land as part of the parking garage.[32]

[54] Mr. Kinzner took me to Exhibits R3, R4 and R5, which show the adjustments the CRA made to the Appellant's Final Methodology.

[55] With respect to the CDC, Exhibit R3 shows that the CRA did not change the square meters of space the Appellant used directly in the making of taxable supplies for consideration or the square meters of space within the structures that the Appellant used indirectly in the making of both taxable and exempt supplies. However, the CRA did increase the number of square meters the Appellant used directly in the making of exempt supplies by the 168,420 square meters of External

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29 Exhibit R3, page 375; Transcript, pages 154-155, testimony of Mr. Kinzner.
30 Exhibit R3, page 375; Exhibit R4, page 447; Exhibit R5, page 535.
31 Transcript, pages 143 and 170, testimony of Mr. Kinzner.
32 Transcript, page 185, testimony of Mr. Kinzner.

Common Areas, resulting in an increase from 7,004.81 square meters to 175,424.81 meters.[33]

[56] Exhibit R4 sets out the similar adjustments the CRA made to the Appellant's numbers in Exhibit C of the PASF I with respect to the Main Campus. The square meters used directly in the making of taxable supplies and those used within structures indirectly for making both taxable and exempt supplies do not change. The number of square meters used directly in the making of exempt supplies increases by the 567,183 square meters of External Common Areas, resulting in an increase from 367,485 to 934,669 square meters.[34]

[57] The CRA made similar adjustments to the Appellant's numbers in Exhibit D of the PASF I with respect to the South Campus. It increased the square meters used directly in the making of taxable supplies by the 8,819 of the External Common Area that was leased as part of the parking garage, resulting in an increase from 53,001 to 61,820 square meters. It increased the number of square meters used directly in the making of exempt supplies by the remaining 22,795 square meters of the External Common Areas, resulting in an increase from 151,941 to 174,736 square meters.[35]

[58] After adjusting the Appellant's calculations for the External Common Areas, the CRA then applied what it refers to as a "weighting index" to its square meter calculations.

[59] A CRA valuator, David Jang, estimated the replacement costs for the buildings, parking lots, and landscaped areas located on the U of C Properties (referred to in the PASF II as the improvements).[36] Mr. Jang calculated the total replacement cost of each of the improvements as of September 30, 2011.[37]

[60] The appendices to Exhibit R3 set out the application of the CRA's indexing factor to the CDC lands.

[61] The CRA auditor, using the replacement cost determined by the CRA valuator, determined a cost per square foot for each of the seven structures and the External Common Areas on the CDC lands as follows:

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33 Exhibit R3, Appendix B, page 375.
34 Exhibit R4, Appendix C, page 447.
35 Exhibit R5, Appendix B, page 555.
36 Statement of Partially Agreed Facts (Valuator's Evidence) ("PASF II"), paragraph 1; Transcript, page 148, testimony of Mr.Kinzner.
37 PASF II, paragraph 2.

- CDC - $230.57 per square foot
- Physical plant - $204.53 per square foot
- General services building - $32.13 per square foot
- Materials handling - $32.13 per square foot
- The three parking lots - $5.05 per square foot
- Green space (roads/sidewalks/landscaping/forest) (the External Common Areas) - $4.25 per square foot[38]

[62] The CRA used the cost per square foot as a weighting index and applied it to the square meter breakdown agreed to by the parties for the seven structures on the CDC land.[39]

[63] For example, for the physical plant located on the CDC land the parties agree that the Appellant used 1,867 square meters of the plant directly in the making of taxable supplies for consideration and 3,592 square meters directly in the making of exempt supplies.[40] The CRA applied its weighting index as follows:

- It first calculated a weighted commercial area for the physical plant equal to the space used directly in the making of taxable supplies for consideration times the weighted index (the cost per square foot for the physical plant), i.e., 1,867 square meters x 204.53 = 381,857.51.

- It then calculated a weighted exempt area for the physical plant equal to the space used directly in the making of exempt supplies times the weighted index (the cost per square foot for the physical plant), i.e., 3,592.00 x 204.53 = 734,671.76.

- The CRA then totalled these amounts to arrive at a weighted total area for the physical plant of 1,116,529 (381,857 + 734,671).

[64] The CRA completed the same calculation for each of the other six structures on the CDC land.[41]

[65] A calculation was also done for the External Common Areas. Specifically, the CRA auditor began with the 168,420 square meters that the parties agreed was

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38 Exhibit R3, Appendix C, page 377; Transcript, pages 149-151, testimony of Mr. Kinzner.

39 Exhibit R3, Appendix D, page 378; transcript, pages 157-162, testimony of Mr. Kinzner.

40 PASF I, Exhibit B.

41 For the CDC building itself, it apportioned the mixed-use space (1,583 square meters) between commercial and exempt area. This calculation was not done for any other buildings on the U of C Properties.

the size of the CDC External Common Areas.[42] Since Mr. Kinzner assumed all of this area was "exempt", he calculated a weighted exempt area for the entire External Common Areas equal to the size of the External Common Areas times the weighting index (cost per square foot for improvements on the External Common Areas) i.e., 168,420 x 4.25 = 715,785.[43]

[66] The CRA then totalled the calculated weighted commercial area, the weighted exempt area, and the weighted total area for the CDC lands with the following result:

- Weighted square meters used in commercial activities – 3,888,152.35
- Weighted square meters used in exempt activities - 1,673,408.46 [44]
- Weighted total area – 5,561,560.81

[67] The CRA used the same method to apply the indexing factor to the Main Campus. It used the cost per square foot as a weighting index and applied it to the agreed calculation of the square meters used directly in the making of taxable supplies for consideration, the square meters used directly in making exempt supplies and the square meters used indirectly in the making of supplies for the structures on the Main Campus.[45]

[68] With respect to the External Common Areas, the auditor began with the 567,183 square meters that the parties agreed was the size of the External Common Areas on the Main Campus.[46] Since the CRA auditor assumed all of this area was "exempt", he calculated a weighted exempt area for the entire External Common Areas equal to the size of the External Common Areas times the weighted index (cost per square foot for improvements on the External Common Areas) i.e., 567,183 x 4.25 = 2,410,528.[47]

[69] The CRA then totalled the calculated weighted commercial area, the weighted exempt area and the weighted total area for the Main Campus, including the External Common Areas, with the following result:

- Weighted square meters used in commercial activities – 18,824,279
- Weighted square meters used in exempt activities – 85,426,040

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42 PASF I, Exhibit B.
43 Exhibit R3, Appendix D, page 378.
44 This includes 715,785 weighted square meters for the External Common Areas.
45 Exhibit R4, Appendix D and Appendix E, pages 448-455; Transcript, pages 172-175, testimony of Mr. Kinzner.
46 PASF I, Exhibit C.
47 Exhibit R4, Appendix E, page 454.

- Weighted total area – 104,250,320.[48]

[70] The CRA used the same indexing method for each structure on the South Campus and for the South Campus External Common Areas, with the following result:

- Weighted square meters used in commercial activities – 5,152,150
- Weighted square meters used in exempt activities – 38,016,992
- Weighted total area 43,169,142 [49]

[71] The CRA then determined the extent to which the Appellant used each piece of land in commercial activities by taking, for each of the three pieces of land, the amount it calculated as the total weighted square meters used in making taxable supplies for consideration and dividing it by the weighted total area for the piece of land. This resulted in the following percentages (i.e., the Respondent's Percentages),

- CDC – 69.91% (3,888,152/5,561,561)
- Main Campus 18.06% (18,824,279/104,250,320)
- South Campus 11.93% (5,152,150/43,169,142)[50]

[72] It is the Respondent's position that the Appellant is entitled to input tax credits calculated by applying the Respondent's Percentages to the agreed amount of GST that the Appellant paid or was deemed to have paid on each property.[51] For example, Exhibit A of the PASF I shows that the eligible amount of GST for the Appellant's August 2007 reporting period for the CDC was $543,700.11. It is the Minister's position that the Appellant was entitled to claim an input tax credit equal to 69.91% of this amount.[52]

VI. **The Law**

[73] Subsection 169(1) of the Act contains the general rules for the claiming of input tax credits. The applicable portions of subsection 169(1) read as follows:

> Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person

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48 Exhibit R4, Appendix E, page 454.
49 Exhibit R5, Appendix D, page 539; Transcript, pages 183-184, testimony of Mr. Kinzner.
50 PASF I, paragraph 15.
51 The agreed amounts are set out in Exhibit A of the PASF I.
52 Exhibit R3, Appendix E, page 379; see also Exhibit R4, Appendix F, page 457 and Exhibit R5, Appendix E, page 540.

during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period

A x B

where

A is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the person during the reporting period or that is paid by the person during the period without having become payable; and

B is

. . .

(b) where the property or service is acquired, imported or brought into the province, as the case may be, by the person for use in improving capital property of the person, the extent (expressed as a percentage) to which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and

(c) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

[74] These appeals relate to the Appellant's ability to claim input tax credits with respect to the acquisition of capital real property and subsequent improvements to the real property. Under paragraph *(c)* of the definition of B in subsection 169(1), a GST registrant is entitled to claim an input tax credit for GST paid on the acquisition of capital real property according to the extent to which it acquired the property for consumption, use or supply in the course of its commercial activities. With respect to improvements to the capital real property, paragraph *(b)* of the definition of B in subsection 169(1) allows a person who is a registrant to claim an input tax credit based upon the extent to which the person was using the capital real property in the course of the person's commercial activities immediately after the capital real property was last acquired by the person.

[75] Subsection 209(1) provides that subsections 199(2) to (4) and 200(2) and (3) apply, with any modifications the circumstances require, to certain real property

acquired by a registrant that is a public service body as if the real property were personal property. Those subsections apply to real property acquired by the public service body for use as capital property or, in the case of subsection 199(4), to improvements to capital real property of the public service body.

[76] The Appellant is a public service body. Therefore, in the first instance, subsection 209(1) would apply to any acquisition of the U of C Properties and to improvements to those properties.

[77] Subsections 199(2) to (4) contain rules that are generally referred to as the primary use test. The combined effect of those provisions and subsection 209(1) is that tax payable by a registered public service body in respect of the acquisition of capital real property is not included in determining the input tax credit of the public service body unless the real property was acquired for use primarily in commercial activities of that body.[53] A similar rule applies for improvements to such real property. Any tax payable in respect of improvements is not included in determining the input tax credit of the public service body unless, at the time that such tax is paid or becomes payable, the capital real property is used primarily in commercial activities of the public service body.[54]

[78] It is my understanding that the Appellant prior to making the section 211 elections on February 1, 2006, was not entitled to claim input tax credits in respect of the U of C Properties since it was not using the properties primarily in commercial activities.

[79] Section 211 provides a mechanism whereby certain public service bodies may claim input tax credits in respect of real property that they do not use primarily in commercial activities. In addition, the election results in certain exempt supplies of the real property becoming taxable supplies.

[80] Subsection 211(1) provides in part that, where a public service body files an election with respect to real property that is capital property of the body, section 209 does not apply to the property. As a result, the public service body is entitled to claim input tax credits in respect of such real property even if the real property is used primarily in non-commercial activities.

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53 Subsections 209(1) and 199(2).

54 Subsections 209(1) and 199(4).

[81] In addition, supplies of the real property that would otherwise be exempt because of the application of section 1 of Part V.1 of Schedule V[55] or the application of section 25 of Part VI of Schedule V[56] are excluded from exemption under these sections.

[82] The evidence before me is that, prior to February 1, 2006, the Appellant made significant exempt supplies of real property by way of lease. As a result of the elections under section 211, these supplies became taxable supplies.

[83] Once a public service body makes an election under subsection 211(1), it is deemed under paragraph 211(2)*(a)* to have made, immediately before the effective date of the election, a supply of the real property by way of sale and to have collected, on the particular day, tax in respect of the supply equal the basic tax content of the property on the particular day.[57]

[84] Paragraph 211(2)*(b)* deems the public service body to have received on the effective date of the election a taxable supply of the real property by way of sale and to have paid, on the particular day, tax in respect of the supply equal to the basic tax content of the property on the particular day.

[85] Effective February 1, 2006, the Appellant made elections under section 211 in respect of the CDC, the Main Campus, and the South Campus. As a result, it was deemed to have made a supply of each property immediately before February 1, 2006 and to have acquired each of the properties on February 1, 2006.

[86] There is no dispute before the Court with respect to either the deemed supply under paragraph 211(1)*(a)* of each of the three properties or the Appellant's ability to claim an offsetting input tax credit for the tax it was deemed to have collected.[58]

[87] The issue before the Court is the Appellant's ability to claim input tax credits for the tax it was deemed to have paid on the exercise of the elections and for the GST it subsequently paid in respect of improvements to the U of C Properties.

[88] The majority of the input tax credits at issue relate to the GST the Appellant was deemed under paragraph 211(2)*(b)* to have paid on the deemed acquisition of

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55 Section 1 of Part V.1 of Schedule V exempts certain supplies made by charities.
56 Section 25 of Part VI of Schedule V exempts certain supplies of real property made by a public service body.
57 Basic tax content is defined in subsection 123(1).
58 I assume the offsetting input tax credit was claimed under section 193.

the U of C Properties. Under subsection 169(1), the Appellant is entitled to claim a credit for such tax based on the extent (expressed as a percentage) to which it acquired the real property for use in the course of its commercial activities.

[89] The parties also disagree on the amount of input tax credits the Appellant is entitled to claim in respect of tax paid or payable, after the deemed acquisition, on improvements to the properties. Since the U of C Properties are capital real property of the Appellant and the Appellant has made elections under subsection 211(1), paragraph 169(1)*(b)* and the change-in-use rules in section 206 apply when determining the Appellant's entitlement to input tax credits for tax paid in respect of improvements to the properties. These provisions look at the Appellant's actual use of the properties.

[90] Regardless of which provisions apply, the Appellant's ability to claim input tax credits is dependent on its intended or actual use of the properties in its commercial activities. Commercial activity is defined in subsection 123(1). The relevant portions of the definition for the purposes of these appeals are as follows:

> *(a)* a business carried on by the person . . . except to the extent to which the business involves the making of exempt supplies by the person,
>
> . . . and
>
> *(c)* the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.

[91] Business is defined in subsection 123(1) as follows:

> "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment.

[92] Under the GST Act, a person's business is broader than the person's commercial activity. A business includes all of the activities of a person regardless of whether the activities involve the making of taxable supplies or of exempt supplies. This is an important distinction for the purposes of various provisions of the Act, including the input tax credit apportionment rules contained in section 141.01.

[93] On the evidence before me, I have concluded that the Appellant carried on a single business, namely, the operation of a university, and that it carried on all of its activities in the course of this business. All of the business constituted a commercial activity of the Appellant, except to the extent to which the business involved the making of exempt supplies.

[94] The application of subsection 169(1) to tax paid on property or services acquired by a registrant in the course of its business for consumption or use directly in the making of a specific supply is relatively straightforward. For example, if the registrant acquires the property or service only for consumption or use directly in the making of a taxable supply, then the property is consumed or used in the course of the registrant's commercial activity and the registrant is entitled to claim a full input tax credit for the tax paid on the acquisition of the property or service. Alternatively, no input tax credit is available if the registrant acquires the property or service solely for consumption or use directly in the making of exempt supplies.

[95] The application of subsection 169(1) to "indirect costs", that is, property and services that are not used directly in the making of a taxable or an exempt supply, is not as straightforward. When making a determination in this regard, one must consider the section 141.01 input tax credit apportionment rules.

[96] Indirect costs include such things as administrative costs, overhead costs, and costs incurred in respect of common areas in or around a building. For example, in most instances, the payroll department of a corporation that makes both taxable and exempt supplies will not be involved directly in the making of any supplies by the corporation.

[97] The expenses of the payroll department are incurred in the course of the registrant's business. All of the registrant's business constitutes its commercial activity, except to the extent to which the business involves the making of exempt supplies. It can be argued that, since the payroll department is not involved directly in the making of exempt supplies, it is not involved in the portion of the registrant's business that makes the exempt supplies. If this argument were accepted, then all of the payroll department's activities would be considered to have occurred in the course of the registrant's commercial activity. Such an interpretation would allow a registrant who makes both taxable and exempt supplies to claim full input tax credits for indirect costs such as costs incurred by its payroll department.

[98] Parliament addressed this issue when it added section 141.01 in 1994, retroactive to the introduction of the GST. Subsections 141.01(2) and 141.01(3) clarify that, when determining input tax credits for a registrant involved in both taxable and exempt activities, one must attribute all costs of the registrant to the making of supplies.

[99] Subsection 141.01(2) sets out a deeming rule that applies on the acquisition of property or a service.[59] The subsection reads as follows:

> Where a person acquires or imports property or a service or brings it into a participating province for consumption or use in the course of an endeavour of the person, the person shall, for the purposes of this Part, be deemed to have acquired or imported the property or service or brought it into the province, as the case may be,
>
> *(a)* for consumption or use in the course of commercial activities of the person, to the extent that the property or service is acquired, imported or brought into the province by the person for the purpose of making taxable supplies for consideration in the course of that endeavour; and
>
> *(b)* for consumption or use otherwise than in the course of commercial activities of the person, to the extent that the property or service is acquired, imported or brought into the province by the person
>
> (i) for the purpose of making supplies in the course of that endeavour that are not taxable supplies made for consideration, or
>
> (ii) for a purpose other than the making of supplies in the course of that endeavour.

[100] Endeavour of a person is defined in subsection 141.01(1) as meaning a business of the person, an adventure or concern in the nature of trade of the person, or the making of a supply of real property of the person.

[101] For example, the endeavour of a person carrying on a single business is all of the activities of the business, including the making of taxable supplies and the making of exempt supplies.

[102] Subsection 141.01(2) applies to property or a service acquired[60] by the person for consumption or use in the course of the business. Pursuant to paragraph

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59 It also applies on the importation of property or a service.

60 The subsection also applies to property or services imported into Canada and property or services brought into a participating province.

141.01(2)*(a)*, the person is deemed, for the purposes of the Act, to have acquired the property or service for consumption or use in the course of commercial activities of the person to the extent that the property or service is acquired by the person for the purpose of making taxable supplies for consideration in the course of the business.

[103] Alternatively, under subparagraph 141.01(2)*(b)*(i), the person is deemed to have acquired the property or service for consumption or use otherwise than in the course of commercial activities of the person to the extent that the property or service is acquired by the person for the purpose of making supplies in the course of the business that are not taxable supplies made for consideration. Normally, this would be exempt supplies and taxable supplies made for no consideration or nominal consideration.[61]

[104] In addition, under subparagraph 141.01(2)*(b)*(ii), the person is deemed to have acquired the property or service for consumption or use otherwise than in the course of commercial activities of the person to the extent that the property or service is acquired by the person for a purpose other than the making of supplies in the course of the business. This provision applies where a person incurs expenses that do not relate to the person's business. Normally, such expenses are personal expenses of the owner of the business or a person related to the owner.

[105] Subsection 141.01(2) looks at the person's purpose when acquiring the property or service, in other words, the person's intended consumption or use of the property or service. In particular, it looks to see if the intention was to use the property or service in the making of taxable supplies for consideration, the making of exempt supplies or the making of a combination of such supplies.[62] The person is only entitled to claim an input tax credit for tax paid on the property or service to the extent that the person's intention was to use the property or service in the making of taxable supplies for consideration.

[106] In my view, if a corporation incurs an expense in the course of its business (endeavour), then the expense will always be incurred for the purpose of making one or more supplies. The purpose of the business is to earn revenue, i.e., to make supplies. Therefore, the result of subsection 141.01 (2) is that all costs incurred by

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61 Under subsection 141.01(4) property or services acquired for the purpose of making a taxable supply for no consideration or nominal consideration may be deemed to have been acquired for the purpose of making a taxable supply for consideration.

62 In addition to taxable supplies for consideration and exempt supplies, the person may make taxable supplies for no consideration or nominal consideration. Generally speaking, under subsection 141.04(4), such supplies are re-characterized as either taxable supplies for consideration or exempt supplies.

a person in the course of the person's business must be traced to a specific supply or multiple supplies in respect of which the costs were incurred.

[107] This is a relatively easy exercise for property or services that can be traced directly to the making of a taxable or an exempt supply. The challenge is to trace indirect costs to the various related supplies.

[108] My view is consistent with the Department of Finance's February 1994 technical notes, which explain the purpose of section 141.01 with respect to indirect costs as follows:

> Many types of properties and services used in the operation of a business are not directly used in the making of supplies. These may be referred to as "indirect inputs". Examples include items of overhead and inputs used in the operation of "support" functions of a business such as a personnel department or an internal audit department. The personnel, management, administrative and other support functions of a business **are part of what is involved in the making of supplies since these functions are undertaken in order for the business to achieve the ultimate end or purpose of making supplies.** . . .
>
> New section 141.01 is added only to reinforce this concept that the ultimate purpose of making supplies of some kind involves all aspects of the business. **The section, in effect, requires an attribution of all costs to the making of supplies.** . . .
>
> [Emphasis added]

[109] Subsection 141.01(3) contains identical rules, except that it applies to the actual consumption or use of the property or service rather than the intended consumption or use of the property or service on its acquisition. This subsection is relevant when applying provisions of the GST Act that look at the actual use or consumption of property or a service in a specific period, such as the section 206 change-in-use rules.

[110] The second input tax credit rule that is relevant for the purposes of these appeals is subsection 141.01(5). Paragraph 141.01(5)*(a)* provides, in part, that the method used by a person in a fiscal year to determine the extent to which property or services are acquired by the person for the purpose of making taxable supplies for consideration or for other purposes must be fair and reasonable and is to be used consistently by the person throughout the year.

[111] Paragraph 141.01(5)*(b)* provides an identical rule for actual consumption or use of the property or service. It provides, in part, that the method used by a person to determine the extent to which the consumption or use of property or services is for the purpose of making taxable supplies for consideration or for other purposes must be fair and reasonable and is to be used consistently by the person throughout the year.

[112] The issue of what is fair and reasonable was recently addressed by my colleague Justice Owen in *Sun Life Assurance Company of Canada v. The Queen.*[63] He stated the following with respect to the method proposed by the Appellant, the Sun Life Assurance Company:

> [37] The definition of the word "reasonable" in the *Oxford English Dictionary* (Second Edition) that is in my view most appropriate is A.2.a: "Having sound judgement; sensible, sane. . . . Also, not asking for too much." The use of the word "raisonnables" in the French version of the provision supports this interpretation.
>
> [38] The use of a reasonableness requirement in tax legislation has been considered in other contexts. In *Bailey v. M.N.R.*, [1989] T.C.J. No. 602 (QL), 89 DTC 416, the Court stated (at page 420):
>
> > What is "reasonable" is not the subjective view of either the respondent or appellant but the view of an objective observer with a knowledge of all the pertinent facts: *Canadian Propane Gas & Oil Limited v. M.N.R.*, 73 DTC 5019 per Cattanach J. at 5028.
>
> [39] In *Maege v. The Queen*, 2006 TCC 117, the Court adopted the general approach to determining reasonableness set out in *Tsiantoulas v. Canada*, [1994] T.C.J. No. 984 (QL), where the Court stated at paragraph 11:
>
> > Reasonableness is a question of fact and requires the application of a measure of judgement and common sense.
>
> [40] I can see no reason why the general approach to determining reasonableness in these cases would not also apply to determining whether a particular method is "fair and reasonable". That is to say, what is "fair and reasonable" is a question of fact and requires the application of a measure of judgment and common sense. The determination is not based on the subjective view of either the Appellant or the Respondent but is based on the view of an objective observer with knowledge

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63 2015 TCC 37. Justice Owen issued his decision after the conclusion of the hearing in these appeals. The Court offered the parties the opportunity to make written submissions with respect to Justice Owen's decision and the decision of my colleague Madam Justice Campbell in *British Columbia Ferry Services Inc. v. The Queen*, 2014 TCC 305. The Court received submissions from the Respondent on April 2, 2015 and from the Appellant on April 6, 2015.

> of all the pertinent facts. It is also important to recognize that the tax authorities cannot simply substitute their approach for that of Sun Life and that there may be more than one method that is fair and reasonable in the circumstances (see *Ville de Magog v. The Queen, supra*).

[113] In my view, this is an accurate statement of the law with respect to the application of the subsection 141.01(5) fair and reasonable test.

VII. Application of the Law to the Facts

A. Tax Paid or Payable

[114] Under subsection 169(1), the amount of the Appellant's input tax credits in the relevant reporting periods is dependent, in the first instance, on the amount of tax that became payable by the Appellant during the relevant reporting periods or that was paid during the periods without having become payable.

[115] The parties agree on the amount of tax the Appellant was deemed to have paid on February 1, 2006 in respect of its deemed acquisition of each of the U of C Properties and on the amount of tax paid in subsequent reporting periods in respect of improvements to the properties.

[116] The tax paid on the deemed acquisition is equal to the basic tax content of the property on that date. Basic tax content is defined, as stated earlier, in subsection 123(1). The definition is extremely long.

[117] Generally, the basic tax content of the U of C Properties on February 1, 2006, was the tax the Appellant had paid in the past on the acquisition of the properties and on any improvements to the properties, provided such tax was not recoverable by way of rebate, refund or remission (the "non-rebated GST"). It includes any tax paid by the Appellant in respect of which it was entitled to claim or did claim an input tax credit.

[118] Paragraph 6 of the PASF I states the following: "A detailed description of the BTC [basic tax content] for each property during the relevant reporting periods is provided in Exhibit "A" [to the PASF I]."

[119] Mr. Kinzner clarified during his testimony that Exhibit A to the PASF I is actually referring to **incremental** non-rebated GST for the relevant reporting

periods noted in Exhibit A.[64] For example, the first line in Exhibit A to the PASF I shows basic tax content of $543,700.01 for the CDC during the Appellant's August 2007 reporting period. Mr. Kinzner explained that this was the basic tax content (as defined in subsection 123(1)) for the property as of June 2007.[65] In other words, it includes the non-rebated GST paid prior to the February 1, 2006 deemed disposition and the non-rebated tax paid on improvements subsequent to the deemed disposition.[66] The fourth line in Exhibit A shows what is referred to as basic tax content of $127,673.54 for the CDC during the Appellant's February 2009 reporting period. Mr. Kinzner explained that this represents the non-rebated GST the Appellant paid between July 2007 and March 2008 in respect of improvements to the property.[67]

[120] The sixth line in Exhibit A shows what is referred to as basic tax content of $23,459.98 for the CDC property during the Appellant's December 2010 reporting period. Mr. Kinzner explained that this represents the portion of the non-rebated GST the Appellant paid between April 2008 and March 2009 in respect of improvements to the property.[68]

[121] I am disappointed that counsel submitted a partial agreed statement of facts that required "clarification" by a witness. Regardless, the parties have agreed on the amount of tax the Appellant was deemed to have paid on the deemed disposition and that it did pay on subsequent improvements.

B. The extent to which the U of C Properties were acquired for use or used in commercial activities

[122] Having determined the amount of tax paid or payable in the relevant periods, the Appellant must then determine the extent to which it used the U of C Properties in its commercial activities. I will first consider the deemed acquisition, on February 1, 2006, of the U of C Properties.

[123] The Appellant carries on a single business that makes both taxable and exempt supplies. It acquired the U of C Properties in the course of carrying on this business. In such a situation, the Appellant must determine the extent to which it

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64 Transcript, pages 163-164, testimony of Mr. Kinzner.

65 Exhibit R3, page 373, shows the tax that was incurred between August 2005 and June 2007.

66 The Appellant is entitled, under section 225, to claim an input tax credit for the reporting period in which the tax became payable or in a subsequent reporting period, subject to a two-year or four-year limitation period. It is not clear, on the facts before me, whether the Appellant was subject to the two-year or four-year limitation period.

67 See Exhibit R3, page 373.

68 See Exhibit R3, page 373.

acquired the properties for use in the course of the portion of the business that constitutes commercial activities and the extent to which it acquired such properties for use in the course of the portion of the business that involved the making of exempt supplies.[69]

[124] For an entity such as the Appellant that carries on a large and complex business, the determination of the extent to which it acquires real property for use in the course of its commercial activities will never be exact. It will always be an estimate. The question is not whether the Appellant's Final Methodology determines the exact extent to which the Appellant acquired the U of C Properties for use in the course of its commercial activities or whether the Respondent's Methodology is better than the Appellant's Final Methodology.

[125] The question is whether the Appellant's Final Methodology provides a fair and reasonable estimate of the extent to which the Appellant acquired the U of C Properties for use in the course of its commercial activities. In most instances, there will be more than one method that is fair and reasonable.

[126] The Appellant's Final Methodology assumes that the Appellant acquired all areas of the land that comprises the U of C Properties in the course of its business for the purpose of making either taxable or exempt supplies. Specifically, the Appellant assumes that it acquired all of the lands that make up the U of C Properties for use directly in the making of taxable supplies for consideration, for use directly in making exempt supplies or for use indirectly in making both taxable and exempt supplies.

[127] This assumption is consistent with the evidence before me. The Appellant's evidence clearly shows that the Appellant acquired each of the U of C Properties for use in the course of its business of operating a university. The Respondent does not challenge this evidence. In fact, the methodology used by the Respondent, the Respondent's Methodology, is based on the same assumption.

[128] The result of the application of the Appellant's Final Methodology is that the extent to which the Appellant used the U of C Properties in its commercial activities is based upon the amount of space on those properties that was used directly in the making of taxable supplies for consideration and the amount of such space that was used directly in the making of exempt supplies.

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[69] Subsection 169(1).

[129] In using this methodology to arrive at its percentages, the Appellant looked at the physical space on each campus and determined whether it used the space directly in the making of taxable supplies, directly in the making of exempt supplies or indirectly in the making of supplies. With respect to the space used directly in the making of supplies, the Appellant examined thousands of rooms contained in the seven structures on the CDC land, the seventy-seven structures on the Main Campus and the six structures on the South Campus.

[130] The Appellant has assumed that the percentage that results from comparing the space used **directly** in the making of taxable supplies for consideration with the total space used **directly** in making taxable supplies for consideration and exempt supplies reasonably reflects the extent to which all of the land was acquired for use in the course of the Appellant's commercial activities.

[131] As a result, the Appellant determined the extent to which the External Common Areas and the Internal Common Areas were used in commercial activities by basing its determination upon the extent to which the space within all of the structures on the U of C properties[70] was used directly to make taxable supplies for consideration. This is a reasonable assumption, since the evidence before me shows that the Appellant used the common areas inside and outside the buildings to facilitate and support the various taxable and exempt supplies it made on the three pieces of land.

[132] In my view, a methodology based on the actual use of space that involves a detailed review of the use of thousands of rooms comprising approximately 898,000 square meters of space, is a fair and reasonable method to determine the extent to which the Appellant acquired the U of C Properties for use in its commercial activities.

[133] While the Respondent accepts that the methodology should be based upon the use of space directly in the making of taxable supplies and directly in the making of exempt supplies, she argues that the Appellant's Final Methodology results in an unfair and unreasonable allocation unless two adjustments are made to the calculation.

[134] The first adjustment is to treat the External Common Areas as being used only in exempt activities. Specifically, the Respondent's Methodology assumes that subsection 141.01(3) applies to the External Common Areas so as to deem the

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70 Including the parking lots.

use of such space to be otherwise than in the course of commercial activities of the Appellant.[71] As a result, the Respondent's Methodology assumes that all of the External Common Areas were used directly in "exempt" activities.[72]

[135] The second proposed adjustment is an attempt to recognize the amount of GST paid on specific pieces of the U of C Properties. The Respondent's Methodology attempts to accomplish this by applying the indexing factor to the calculation of the Appellant's Final Percentages.

[136] I will first consider the parties' treatment of the External Common Areas.

C. External Common Areas

[137] Although the parties do not agree on the Appellant's use of the External Common Areas for the purpose of making supplies, they do agree on the size of the External Common Areas and on the fact that they are comprised of green space, roadways, walkways, and landscaped areas.[73]

[138] The Appellant's Final Methodology assumes that the Appellant used both the Internal Common Areas and the External Common Areas indirectly to make both taxable and exempt supplies.[74]

[139] During his testimony, Mr. Klaiber, using maps, explained to the Court the various uses of the External Common Areas. He explained that the primary purpose of the External Common Areas is to support the activities that occur within the structures located on the U of C Properties.[75]

[140] He explained that the walkways and roadways are used for access to the campus and to move throughout the campus. The walkways are used for access to all of the buildings on campus and various outdoor spaces, such as playing fields and parking lots. For example, he noted that the walkways are used to move people from the City of Calgary's LRT station, which is located adjacent to the campus, to the various buildings on campus, to move people from various bus stops located on campus to the various buildings located on campus and to simply move people between buildings.

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71 See paragraph 47 of the Respondent's Written Representations under the heading "Property used for calculation".
72 Transcript, page 138, testimony of Mr. Kinzner; Discovery read-ins, page 21, examination of Mr. Kinzner.
73 PASF I, Exhibits B, C and D.
74 PASF I, Exhibits B, C and D.
75 Transcript, pages 19-32, testimony of Mr. Klaiber.

[141] Buses, commercial vehicles, and cars use the roadways.

[142] He described the system of roadways, walkways and pathways as transportation corridors to not only give people access to the various buildings and playing fields but also to allow the transportation of goods that are brought in from outside campus and distributed throughout the campus.[76]

[143] He explained how the External Common Areas have underground tunnels that are used to connect all the buildings for heating and cooling purposes, and he further explained that some telecommunications equipment runs through those tunnels.[77]

[144] He explained how people used the landscaped area on the campus as a place to relax and as a meeting place. It also enhanced the look and feel of the campus.

[145] Although this is not noted in the PASF I, the External Common Areas also included some playing fields. Mr. Klaiber testified that various playing fields were used by sports teams and students and were rented to third parties.

[146] The Appellant argues that this evidence clearly shows that the External Common Areas supported all of the activities that occurred on the U of C Properties. I agree with the Appellant.

[147] The Respondent did not present any evidence to contradict Mr. Klaiber's testimony. In fact, there is no evidence before me that the Appellant acquired the portion of the U of C Properties that comprises the External Common Areas for use outside of its business. The evidence before me is that the External Common Areas were an essential part of the three campuses in that they facilitated the making of supplies on the campuses.

[148] In summary, I have found, on the evidence before me, that the ultimate purpose of the various activities that occurred on the External Common Areas was to generate revenue from the Appellant's business. In other words, the Appellant's purpose when acquiring the External Common Areas on February 1, 2006 was no different than its purpose when acquiring, at the same time, the remaining portions of the U of C Properties: to use them for the purpose of making both taxable and exempt supplies.

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[76] Transcript, pages 20 and 26, testimony of Mr. Klaiber.
[77] Transcript, page 22, testimony of Mr. Klaiber.

[149] It is not possible or practical to determine the extent to which the Appellant used a specific portion of the Internal Common Areas or the External Common Areas directly in the making of taxable or exempt supplies.

[150] The Internal Common Areas are comprised of stairwells, corridors, washrooms, heating conduits, foyers and any other area in a specific building that is not used directly to make a supply.

[151] The only way the Appellant could determine whether a person who entered a building for the purpose of receiving a taxable supply used a specific portion of the Internal Common Areas would be to physically monitor the activities of the person. For example, someone would have to stand at the door of each washroom and identify each person who entered the washroom. It was clearly not practical for the Appellant to take such action.

[152] The Appellant faced the same issue with the External Common Areas. Mr. Klaiber testified that, as with the common space within the buildings, it was not possible to trace activity on the External Common Areas to specific supplies. The Appellant simply did not have readily available information.

[153] Mr. Klaiber, in response to a question from the Respondent's counsel asking why the Appellant could identify space in the buildings that was used directly in the making of supplies but could not identify such space within the External Common Areas, stated the following:

> I think the key difference is the readily available information. I mean, with the buildings, we have information on room by room what we use it for.
>
> When we take a look at a walkway, what percentage of that walkway is used from somebody going from an office to get a coffee versus somebody going from a classroom to a classroom? We don't have that information as to what proportion of foot traffic is for taxable supply and exempt supply.
>
> So I mean, the information that we have around that foot traffic, the best information that we have is around the space and how we use our space and our buildings and structures. And that's why we applied it.[78]

[154] As a result, the Appellant was required to develop a methodology to apportion the use of the various components of the Internal Common Areas and the

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78 Transcript, pages 115-116, testimony of Mr. Klaiber.

External Common Areas between their use in the making of taxable supplies for consideration and their use in the making of exempt supplies.

[155] Mr. Klaiber's testimony shows that, at the time of the deemed acquisition of the U of C Properties, the Appellant intended to use the Internal Common Areas and the External Common Areas in the same manner. I agree with the Appellant that any methodology chosen must consider this fact.

[156] Since the Appellant acquired the U of C Properties for use in the course of its business, it was deemed under paragraph 141.01(2)*(a)* to have acquired the properties for use in the course of its commercial activities to the extent that the properties were acquired for the purpose of making taxable supplies for consideration in the course of its business.

[157] On the other hand, the Appellant was deemed under subparagraph 141.01(2)*(b)*(i) to have acquired the U of C Properties for use otherwise than in the course of its commercial activities to the extent that it acquired the properties for the purpose of making supplies in the course of its business that were not taxable supplies made for consideration. There is no evidence before me that the Appellant made supplies for no consideration or nominal consideration. As a result, any supplies that it made that were not taxable supplies made for consideration were exempt supplies made for consideration.

[158] Subparagraph 141.01(2)*(b)*(ii) does not apply to the fact situation before me. Specifically, there was no evidence before me that the Appellant acquired the U of C Properties for use outside of its business.

[159] In summary, subsection 141.01(2) required the Appellant to determine the extent to which it acquired the U of C Properties, including the External Common Areas, for the purpose of making taxable supplies for consideration and the extent to which it acquired the U of C Properties for the purpose of making exempt supplies.

[160] This is exactly what the Appellant's Final Methodology attempts to accomplish.

[161] The Appellant was able to determine the certain portions of the U of C Properties that it acquired for direct use in making taxable supplies and the certain portions that it acquired for direct use in making exempt supplies.

[162] However, it did not use certain portions of the U of C Properties, i.e., the Internal Common Areas and the External Common Areas, directly in making either taxable or exempt supplies. The Appellant used these portions of the properties in the course of making both taxable and exempt supplies. In other words, the Appellant acquired these portions of the U of C Properties for the purpose of making both taxable and exempt supplies. As a result, it was required to develop a methodology that apportioned the use thereof between the making of taxable supplies for consideration and the making of exempt supplies.

[163] As discussed previously, the Appellant's Final Methodology assumes that the Appellant used the Internal Common Areas and the External Common Areas for both taxable and exempt activities in the same relative proportion as it used the space within the structures directly in the making of taxable supplies for consideration and directly in the making of exempt supplies. Using this assumption, the Appellant developed a methodology that resulted in the Appellant's Final Percentages, which are derived from the amount of space used directly in the making of taxable supplies for consideration and the amount of space used directly in the making of exempt supplies. The Appellant applied the relevant final percentage to all GST paid during the relevant period in respect of the relevant piece of land. This includes the GST paid in respect of the Internal Common Areas and the External Common Areas.

[164] This ratio, derived using the Appellant's Final Methodology, satisfies the requirements of the provisions of subsection 141.01(2). It is based upon the use of the space in making both taxable and exempt supplies. Further, the Appellant consistently applied the Appellant's Final Methodology to the portions of the U of C Properties that it used in the same manner, such as the Internal Common Areas and the External Common Areas. In my view, a methodology that treats differently two areas that a registrant uses in the same manner (i.e., the External Common Areas and the Internal Common Areas) does not satisfy the subsection 141.01(5) fair and reasonable test.

[165] While the Respondent's Methodology assumes that the Appellant acquired the Internal Common Areas for use in making both taxable and exempt supplies, it also assumes that the Appellant did not acquire the External Common Areas for use in making taxable supplies for consideration.[79] I have a difficult time understanding the factual and/or statutory basis for this position.

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[79] PASF I, paragraph 13.

[166] The evidence before me is that the Appellant acquired all of the U of C Properties for use in its business, the purpose of which is to make supplies. Further, these supplies include both taxable and exempt supplies. There is no evidence before me that the Appellant only used the External Common Areas to make exempt supplies. Since the External Common Areas supported all activities on the U of C Properties, those areas must, as a question of fact, have been used by persons who were receiving both taxable and exempt supplies.

[167] Mr. Kinzner, the CRA auditor, during his in chief testimony, provided the following explanation for why the Respondent's Methodology treated the External Common Areas (which are referred to as "green space") as being used in what he called exempt activities,

> Q With the green space, I didn't ask you, but we heard evidence on it this morning, what was your determination as to we've agreed to 567,183 square metres, how is that dealt with?
>
> A Yes, we -- we determined that the green space, the roadways, walkways, landscape, the sports fields, et cetera, comprised a total of 567,183 square metres of space on the -- on the main campus. And that area had not been -- been accounted for in the calculations, so we -- we added it in under the -- the heading "External Areas". And we classified it as -- as exempt.
>
> Q Factually why did you do that? What facts do you rely upon to classify it as exempt?
>
> A We relied on pretty much the same facts that we did for the -- the CDC title. That we could find no evidence of -- of taxable supplies for consideration being made on any of this space.[80]

In cross-examination, Mr. Kinzner explained how the CRA differentiated the mixed-use space within the buildings (the Internal Common Areas) from the mixed-use space outside the buildings (the External Common Areas).

> Q . . . let's talk about the MacEwan Students' Centre.
>
> A Okay?
>
> Q And at appendix B, MacEwan Student Centre has 23,291 square metres total area?

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80 Transcript, page 170, testimony of Mr. Kinzner.

A Yes.

...

Q And the exempt activity area was 2,453 square metres?

A Yes.

Q And the commercial activity was 19,408 square metres?

A Correct.

Q And then there is a mixed activity of 1,429 square metres?

A Yes.

Q What was that mixed activity?

A The mixed activity, I believe was the stairwells, the bathrooms and hallways.

Q And why don't you treat that as exempt?

A Because when we're inside of a building, we try to -- to use the building -- we try to -- I think that there is a link to the -- to the use of that hallway and that bathroom within a building to -- to link it to the -- to the exempt and commercial use within that building.

Q Okay. So there is a link to either the commercial or exempt activity?

A Yes, it was claimed that way and we -- we accepted that -- that methodology.

Q And the logic being that there is a -- a link between the commercial exempts?

A Yes.

Q There was not a direct activity of commercial or exempt, it was a combination of both?

A Correct.

Q Now, sir, can I ask you this, if the mixed activity is accepted within a structure, why not between buildings?

A The reason we did not do it between the buildings was because there was no link that we could find that -- that would allow for the -- the exempt and the -- like, for a mixed use for that area.

We had -- we had a roadmap, which gave us a -- gave us direction to use the -- to allow in -- in buildings the -- the mixed use of the area.

Q What's this roadmap?

A It is -- it is one of the documents that -- it's a -- it's a roadmap that was prepared by -- by Headquarters?

...

Q CRA Headquarters developed this roadmap?

A Correct.

Q And was this a public document?

A No, it was not. It was an internal document.

Q Okay. And what did this roadmap tell you about the external space?

A It told us that, the external space was to be treated as -- unless you can find a commercial activity, there was no -- it was treated as exempt.

Q Unless you can find a direct commercial activity?

A Yes.[81]

[168] The Respondent's Methodology with respect to the External Common Areas is based on the assumption that, if a specific area of land is not used directly to make taxable supplies for consideration, under subsection 141.01(2)[82] the area is deemed to be used in "exempt" activities.

[169] The provisions of subsection 141.01(2) do not support such an administrative position.

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81 Transcript, pages 188-191, testimony of Mr. Kinzner.

82 The Respondent notes in her written submissions that she relied on subsection 141.01(3). However, since I am dealing with the acquisition of the U of C Properties, the relevant subsection is 141.01(2). The two subsections contain identical rules: subsection 141.01(2) applies on the acquisition of property, while subsection 141.01(3) applies to consumption or use subsequent to the acquisition.

[170] The test is not whether the Appellant made taxable supplies for consideration on a specific piece of the U of C Properties. The test is the extent to which the specific piece of land was acquired or used for the purpose of making taxable supplies for consideration. Subsection 141.01(2) recognizes that property or services may be used indirectly, rather than directly, in the making of supplies. For property used indirectly in the making of supplies the subsection requires one to determine how the use of the property relates to the aim or objective of making taxable supplies.[83]

[171] A test based only on direct use of property or services would lead to absurd results. For example, under such a test, the Appellant would not be entitled to claim input tax credits for GST paid in respect of the External Common Areas even if it only made taxable supplies. Clearly, this is not consistent with the object and spirit of the GST Act. Under the GST Act, a registrant who only makes taxable supplies is entitled to claim full input tax credits for GST paid on property or services acquired for consumption or use in its business.

[172] As I have stated previously, the evidence before me is that the Appellant acquired the U of C Properties for the purpose of making supplies in the course of its business. Subsections 169(1) and 141.01(2) allow the Appellant to claim an input tax credit to the extent that the properties were acquired for use directly or **indirectly** in the making of taxable supplies for consideration.

[173] It is difficult for the Court to understand how the Minister could conclude that the Appellant acquired the common areas located within the buildings (the Internal Common Areas) for the purpose of making both taxable supplies for consideration and exempt supplies and the common areas located outside of the buildings (the External Common Areas) only for the purpose of making exempt supplies. This appears to be an arbitrary administrative decision rather than a decision based on applying the provisions of the GST Act to the actual use of the External Common Areas.

[174] In summary, the treatment of the External Common Areas under the Appellant's Final Methodology is fair and reasonable and is consistent with the provisions of the GST Act. However, the treatment of the External Common Areas under the Respondent's Methodology does not comply with the provisions of the

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[83] See for example, Department of Finance Technical Notes, February 1994, Subsection 141.01(2) – *Acquisition for Purpose of Making Supplies.*

GST Act. As a result, the Respondent's Methodology cannot be used to determine the Appellant's entitlement to input tax credits.

D. The Indexing Factor

[175] The second adjustment that the Respondent argues is required in order for the Appellant's Methodology to be fair and reasonable is the application of the indexing factor.

[176] As I explained previously, the CRA calculated an indexing factor based upon the replacement value of the U of C Campus on September 30, 2011. The Respondent's Methodology applies this indexing factor to the Appellant's Final Methodology (after first making the adjustment for the External Common Areas) to determine the Appellant's intended use of the U of C Properties in commercial activities on February 1, 2006.

[177] The Respondent's argument for the use of the indexing factor is set out in her written submissions as follows (at paragraph 55):

> The respondent's submission is that it is not fair and reasonable to compare a unit of space with a lower value of improvements to a unit of space with a higher value of improvements. Lower cost space contributes comparatively less GST input cost and BTC [basic tax content] to a title than does higher cost space. A correcting factor must be utilized to match spaces of the title upon which GST was paid or payable, to areas from which ITCs [input tax credits] are sought to be recovered.

[178] I do not agree with the Respondent that the use or non-use of the indexing factor is a question of what is fair and reasonable as that term is used in subsection 141.01(5). With respect to the acquisition of property, paragraph 141.01(5)*(a)* applies the fair and reasonable test to the determination of the extent to which property was acquired for the purpose of making taxable supplies for consideration or for other purposes.

[179] The addition of an indexing factor does not in any way help in the determination of the purpose of the acquisition of the U of C Properties.

[180] Once the Appellant determines, using a fair and reasonable method, the extent (expressed as a percentage) to which it acquired the U of C Properties for the purpose of making taxable supplies for consideration, then, under subsection 169(1), it is required to apply the percentage to the tax that was deemed to have

been paid (the basic tax content) on the deemed acquisition of the U of C Properties.

[181] This is exactly what the Appellant did using the Appellant's Final Methodology and the basic tax content of each of the U of C Properties on the date of the deemed acquisition.

[182] In my view, the Respondent is simply arguing that her method is better than the Appellant's method on the basis that it results in a more accurate correlation between the use of the property by the Appellant, and the tax paid by the Appellant.

[183] As my colleague Justice Owen noted in *Sun Life*, the CRA cannot simply substitute its method for that of the GST registrant. A GST registrant is entitled to use any method that is fair and reasonable provided it complies with the provisions of the Act.

[184] Regardless, the Respondent's use of the indexing factor has serious shortcomings.

[185] First, the Respondent used the 2011 replacement cost to determine the Appellant's entitlement to input tax credits in 2006, five years earlier. I would expect that costs would have changed over the five years, both in absolute and in relative terms.

[186] Second, the use of the indexing factor ignores the fact that the Appellant constructed several of the buildings prior to the introduction of the GST. The Appellant did not pay GST on property or services acquired to construct these buildings or to make pre-GST improvements to the buildings.

[187] The GST at issue is equal to the basic tax content on the date of the deemed acquisition of the U of C Properties. It is the tax paid since the introduction of the GST. The application of the indexing factor to buildings constructed prior to the introduction of the GST seriously decreases the reliability of the resulting ratios.

[188] For example the CRA calculated that the basic tax content of the Main Campus on December 31, 2007 was $4,787,125 on the basis of expenditures of approximately $224,500,000.[84] The $224,500,000 represents the expenditures the

[84] Exhibit R4, page 443; Transcript, pages 167-168, testimony of Mr. Kinzner.

Appellant made with respect to the Main Campus between the introduction of the GST and December 31, 2007.

[189] The CRA determined that the replacement cost for the Main Campus was $1.282 billion.[85] The expenditures incurred between the introduction of the GST and the date of the deemed acquisition represent only 17.5% of the total replacement costs. This evidences the fact that the Appellant constructed a substantial portion of the buildings prior to the introduction of the GST. This is consistent with the fact that the university was founded in 1966.

[190] Another concern I have with respect to the use of the indexing factor is that it requires the Appellant to hire a valuator in order to determine its entitlement to input tax credits. This would place an unreasonable financial burden on the Appellant and other GST registrants who would be required to perform similar calculations. Further, if the Court accepted this method, the Appellant would be required to retain a valuator each time the section 206 change-in-use rules apply to its capital real property.

[191] In my view, a GST registrant should be entitled to determine its input tax credits on the basis of information in its possession, without having to resort to hiring expensive third parties, such as valuators.

[192] In summary, I do not accept the Respondent's argument that the Appellant's Final Methodology requires an indexing factor in order to satisfy the subsection 141.01(5) fair and reasonable test.

E. Improvements to the U of C Properties

[193] I will now address the input tax credits the Appellant is entitled to claim with respect to GST paid on the improvements to the U of C Properties that occurred after the deemed disposition.

[194] As discussed previously, the Appellant is entitled to claim input tax credits for GST paid on improvements to the U of C Properties according to the extent to which it was using the U of C Properties in the course of commercial activities immediately after it last acquired the properties.

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[85] PASF II, page 4.

[195] Since the Appellant made the subsection 211(1) elections, the section 206 change-in-use rules must be considered when determining the Appellant's entitlement to claim input tax credits for improvements to the U of C Properties.

[196] The parties argue that either the single percentage determined under the Appellant's Final Methodology or the single percentage determined under the Respondent's Methodology should be used to determine the Appellant's entitlement to input tax credits at the time of the deemed acquisition and at the time of subsequent improvements to the U of C Properties.

[197] This means the parties have accepted that there was no significant change in the use of the U of C Properties during the relevant periods. Because of the application of section 197, the Appellant would only have to change the Appellant's Final Percentage if it had changed its use of one of the three U of C Properties by 10% or more of the total use of the property.

[198] Therefore, in view of the finding that the Appellant's Final Methodology satisfies the provisions of the GST Act with respect to the determination of the Appellant's entitlement to input tax credits for the GST it was deemed to have paid on the deemed acquisition, the methodology also satisfies the provisions of the GST Act with respect to GST paid on subsequent improvements to the U of C Properties.

VIII. **Disposition of Appeals**

[199] For the foregoing reasons, the appeals from the reassessments made under the *Excise Tax Act* and dated September 30, 2011, January 24, 2012, February 2, 2012 and April 20, 2012 are allowed with costs. The reassessments are referred back to the Minister for reconsideration and reassessment on the basis that, during the relevant periods, the Appellant used the property identified as Plan 1935JK to the extent of 81.2% in its commercial activities, the property identified as Plan 859JK to the extent of 41.33% in its commercial activities and the property identified as Plan 9410341 to the extent of 25.86% in its commercial activities.

[200] The parties have thirty days from the date of this judgment to make representations with respect to the amount of costs that the Court should award to the Appellant. If no submissions are received, costs shall be awarded to the Appellant as set out in the Tariff.

Signed at Ottawa, Canada, this 11th day of December 2015.

"S. D'Arcy"

D'Arcy J.

CITATION:	2015 TCC 321
COURT FILE NO.:	2013-3473(GST)G
STYLE OF CAUSE:	UNIVERSITY OF CALGARY V. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	October 29 and 30, 2014. Submissions received from the Respondent on April 2, 2015 and from the Appellant on April 6, 2015.
REASONS FOR JUDGMENT BY:	The Honourable Justice Steven K. D'Arcy
DATE OF JUDGMENT:	December 11th, 2015
APPEARANCES: For the Appellant:	Justin Kutyan Carla Hanneman
Counsel for the Respondent:	Ronald MacPhee Jack Warren
COUNSEL OF RECORD: For the Appellant:	
Name:	Justin Kutyan Carla Hanneman
Firm:	KPMG Law Bay Adelaide Centre 333 Bay Street, Suite 4600 Toronto, ON M5H 2S5
For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada

TAB 3

Sun Life Assurance Company of Canada v. The Queen, 2015 TCC 37 (CanLII)

Docket: 2012-481(GST)G

BETWEEN:

SUN LIFE ASSURANCE COMPANY OF CANADA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 22, 2014, at Toronto, Ontario

Before: The Honourable Justice John R. Owen

Appearances:

Counsel for the Appellant:	Justin Kutyan Vern Vipul
Counsel for the Respondent:	Khashayar Haghgouyan

JUDGMENT

The appeal from a reassessment made under the *Excise Tax Act* for the reporting period from January 1, 2006 to December 31, 2006 by notice number 071310187229G0002 dated May 1, 2009 is allowed, with costs to the Appellant, and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Sun Life is entitled to additional input tax credits of $1,279,180.49.

Signed at Ottawa, Canada, this 16th day of February 2015.

"J.R. Owen"

Owen J.

Citation: 2015 TCC 37
Date: 20150216
Docket: 2012-481(GST)G

BETWEEN:

SUN LIFE ASSURANCE COMPANY OF CANADA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Owen J.

I. Introduction

[1] This is an appeal by Sun Life Assurance Company of Canada ("Sun Life") from a reassessment by notice number 071310187229G0002 dated May 1, 2009, issued under the *Excise Tax Act* (the "ETA") for the reporting period of January 1, 2006 to December 31, 2006. The reassessment denied Sun Life's claim for certain input tax credits (ITCs) in the amounts of $1,279,180.49, $53,700.33 and $2,954.43. Sun Life objected to and then appealed the denial of the first amount of $1,279,180.49 but did not object to or appeal the denial of the other two amounts. Accordingly, only Sun Life's claim for ITCs in the aggregate of $1,279,180.49 is in issue in this appeal. According to the Amended Reply to the Amended Notice of Appeal (the "Reply"), the $1,279,180.49 comprises the following amounts: (i) ITCs of $398,411.58 claimed for the reporting period ending December 31, 2006; (ii) ITCs of $484,020.97 claimed by retroactive adjustment for the reporting period ending December 31, 2005; and (iii) ITCs of $396,747.96 claimed by retroactive adjustment for the reporting period ending December 31, 2004.[1]

II. Facts

[2] Sun Life called as a witness Mr. Stéphane Coutu. Mr. Coutu is a CA and a CPA and holds the office of Assistant Vice-President of Indirect Tax and Transfer Pricing at Sun Life. The Respondent called as a witness Mr. Gilles Lazure. Mr. Lazure is employed by the Agence du Revenu du Québec (the "Quebec Revenue Agency" or "Revenu Québec") and has been responsible for auditing insurance companies since 1985. The Quebec Revenue Agency is responsible for administering the federal GST in the province of Québec. The parties also introduced into evidence a joint book of documents consisting of nine tabs and marked as Exhibit A-1 (the "Joint Book").

[3] Sun Life is a corporation incorporated under the laws of Canada that operates as an insurance company. Sun Life sells a range of financial products and services that are primarily insurance-based but that also include wealth management products, such as investments and retirement products (collectively, the "Financial Products"). The Financial Products are sold through many different channels, including through independent contractors called sales advisers ("Advisers"). The sale of Sun Life's Financial Products is considered to be the supply of a financial service that is an exempt supply by virtue of Part VII of Schedule V to the ETA.

[4] Sun Life maintains financial centres across Canada which focus on the sale of Financial Products. The financial centres house both employees of Sun Life and Advisers. The space occupied by the financial centres is leased from third party landlords and Sun Life pays GST on the rent it pays for each financial centre as well as on any leasehold expenditures associated with the financial centre.

[5] The rent paid by Sun Life to the third party landlords varies from location to location but is generally composed of a base rent, an additional rent and, in some cases, other charges. The base rent is stated as a dollar amount per square foot per annum. The additional rent is made up of Sun Life's share of expenses incurred by the landlord, namely, building operating costs, property taxes, janitorial services, electricity costs, heating costs, air conditioning costs and such other costs as may be agreed. The amount of additional rent can be stated as a dollar amount per square foot per annum.

[6] A sample lease at Tab 7 of the Joint Book describes a lease of space in Brossard, Quebec consisting of 8,855 usable square feet and Sun Life's share of common areas of 1,328 square feet, for a total area under lease of 10,183 square feet. The rent charged is composed of base rent of $11.75 per square foot per annum and additional rent estimated to be approximately $10 per square foot per annum. The base rent and estimated additional rent are applied to the total area of 10,183 square feet to determine the amount payable by Sun Life. The lease has an addendum that increases the total leased space to 12,454 square feet, extends the term of the lease by three years and increases the base rent to $12.15 per square foot per annum. No estimate is given for additional rent, but Sun Life's share of the landlord's costs that is incorporated into additional rent is stated to be 17.79 percent of those costs.

[7] A chart at paragraph 32. h) of the Reply, with which Mr. Coutu agreed, summarizes the information regarding the total space rented by Sun Life for financial centres (collectively, the "Leased Space") and the GST paid on the rent for the Leased Space, as follows:

	Space Rented by the Appellant (Square feet)	GST Paid by the Appellant
2004	742,298	$1,298,125
2005	714,674	$1,485,882
2006	712,789	$1,303,551

[8] The Advisers are entitled to rent space in the financial centres from Sun Life but are not obligated to do so. Sun Life estimates that approximately 50% of the Advisers do rent space and that the space rented by the Advisers typically ranges from 100 to 140 square feet.

[9] The rental arrangement is implemented through a sublease agreement between the Adviser and either Sun Life or a predecessor of Sun Life. The financial terms of the sublease are set out in an e-mail to the Adviser, which is referenced in the body of the sublease agreement. Generally, the rent is calculated as the area of the Adviser's office in square feet times a monthly rate per square foot plus GST. The Adviser is also subject to a monthly charge for the telephone and ethernet connection in the rented office. In cross-examination, Mr. Coutu acknowledged that, although the Adviser was renting a specific office within the financial centre, under the sublease the Adviser would have full access to the financial centre and the building common areas and would access the financial centre through the same entrance as the employees of Sun Life.

[10] Tab 8 of the Joint Book contains a copy of a sublease agreement for an Adviser's office in the Brossard financial centre comprising 123 square feet leased at a rate of $2.66 per square foot per month or $31.92 per square foot per annum plus applicable tax. Mr. Coutu testified that the difference between the rate charged to the Adviser of approximately $32 per square foot per annum and the rate paid by Sun Life of approximately $23 per square foot per annum reflected Sun Life's attempt to recover the effective cost of the office from the Adviser. Mr. Coutu also testified that if there was any discount in the rental charged to the Adviser as compared to Sun Life's effective cost of the office, it was minimal. In cross-examination, Mr. Coutu explained that the situation described in paragraph 20 of the Amended Notice of Appeal, which states that the consideration payable by Advisers to Sun Life was less than the consideration payable by Sun Life to its landlords, reflected the fact that Sun Life may not achieve full recovery of the effective cost of the space rented to Advisers but that "significantly all" of that cost is recovered.[2]

[11] A chart at paragraph 32. p) of the Reply, with which Mr. Coutu agreed, summarizes the information regarding the space rented by the Advisers in each year, as follows:

	Space Subleased by the Appellant to the Advisors (Square feet)	GST charged by the Appellant
2004	210,008	$338,994
2005	207,804	$351,605
2006	194,381	$316,218

[12] Each financial centre houses one or more employees of Sun Life who are charged with the supervision of the financial centre and the providing of support for the Advisers. The task of recruiting Advisers falls on these employees and, as there is a high turnover of Advisers, a large portion of these employees' role is to recruit and support new Advisers. According to Mr. Coutu, the focus is always on the recruitment of Advisers, not on the renting of space to the Advisers.

[13] Mr. Coutu testified that Sun Life's model targets a ratio in each financial centre of one employee of Sun Life to eight Advisers. This ratio dictates the amount of space at each financial centre that is considered by Sun Life to be available to Advisers. On average, a portion of the space allocated to Advisers is vacant. A chart at paragraph 32. r) of the Reply, with which Mr. Coutu agreed, summarizes the information regarding the amount of vacant space in each year as follows:

	Vacant Office Space (Square feet)
2004	83,566
2005	82,924
2006	81,932

[14] Mr. Coutu testified that the vacant office space varies from financial centre to financial centre and represents space that is kept available for new Advisers who choose to rent space from Sun Life, so that the financial centres have the capacity to grow. The variability of the vacancy rate from financial centre to financial centre during 2004, 2005 and 2006 is shown in three charts at Tabs 1, 2 and 3 of the Joint Book under the column titled "Vacant Space As a % of Total Area under Lease".

[15] In cross-examination, Mr. Coutu conceded that the vacancy rate could be as high as 50% if measured as a percentage of the area available for rent to Advisers instead of the total area under lease. Mr. Coutu further stated that the vacant space would not be rented to someone who was not an Adviser but that a vacant office could be used by an employee of Sun Life, at which point it would no longer be considered Adviser space. If the area of a financial centre is determined to be too large for Sun Life's needs, the excess space may be returned to the landlord or it may be physically segregated and subleased. Mr. Coutu did not know whether this had occurred during the periods in issue.

[16] In filing its GST returns for the reporting periods from January 1, 2004 to December 31, 2004 and from January 1, 2005 to December 31, 2005, Sun Life claimed ITCs in respect of the space sublet to Advisers in an amount equal to the GST collected from the Advisers on the rent charged to the Advisers for space in the financial centres. Mr. Coutu explained that Sun Life did not have the information needed to claim higher ITCs and that using the GST collected was a "good floor" on which to claim some ITCs.[3] Sun Life subsequently revised its ITC claim for 2004 and 2005 and applied the revised approach to 2006, resulting in the claim for additional ITCs of $1,279,180.49 which is the subject of this appeal.

[17] With respect to the new method for calculating ITCs, in 2006, Sun Life started measuring the physical dimensions of some of its financial centres to obtain a clearer picture of the actual use of the space. Initially, Sun Life prepared diagrams for 11 financial centres, which divided the space into four categories and provided the floor area for each category (the 11 diagrams are reproduced at Tab 6 of the Joint Book): (1) space used, or intended for the use of, Advisers (shown in yellow); (2) space used by Sun Life (shown in blue); (3) space used by both Sun Life and the Advisers (shown in pink); and (4) interior corridor and hallway space (shown in various ways in green). In addition to the four categories of coloured space, the building common areas such as elevators, stairways, washrooms and public hallways are shown without any colouring.

[18] The floor area for each category was determined and, in the case of the third and fourth categories and the public common areas, was allocated between the Advisers and Sun Life. The 11 samples were used to estimate the use of space in every financial centre for 2004, 2005 and 2006. Mr. Coutu testified that in subsequent years Sun Life measured every financial centre so that it did not have to rely on estimates.[4]

[19] Sun Life's revised methodology for the calculation of ITCs for 2004, 2005 and 2006 is found in worksheets reproduced at Tabs 1, 2 and 3 of the Joint Book and in supporting materials found at Tabs 4 and 5 of the Joint Book. Mr. Coutu provided an explanation of this methodology, using as an example the calculation of ITCs for the Toronto East financial centre for 2004, found at Tab 1, page 2 of the Joint Book:

- Column A, titled "Total Rent/Maintenance", sets out the total rent paid for the financial centre in 2004, which for Toronto East is $520,188.

- Column B, titled "GST Paid on Rent Per GL", sets out the total GST paid on the rent in column A, which for Toronto East is $33,279.15.

- Column C, titled "Leasehold Expense", sets out any other expenses that Sun Life incurred in respect of the financial centre, such as maintenance charges (Mr. Coutu was not certain of the details). The amount stated is $741.

- Column D, titled "Leasehold Capital", was not explained, but appears to set out any capital expenditures made by Sun Life on leaseholds.

- Column E, titled "Total Leaseholds", was not explained, but is described under the heading as the sum of Columns C and D, which for Toronto East is $741.

- Column F, titled "Calculated GST on Leaseholds", was not explained, but is described under the heading as Column E times 7/115, which for Toronto East is $45.10.

- Column G, titled "Total GST on Rent and Leaseholds", sets out the total GST payable by Sun Life in respect of its lease of the financial centre. It is described under the heading as the sum of Columns B and F, which for Toronto East is $33,324.25.

- Column H, titled "Square Footage under Lease", sets out the square footage leased by Sun Life from the landlord as stated in the relevant lease, which for Toronto East is 16,550 square feet. No explanation was provided by Sun Life as to why this number differed from the 11,500 square feet stated on the diagram for that financial centre at Tab 6, page 22 of the Joint Book. Only the diagrams for Hamilton and Barrie also included a figure for the area under lease and in both cases it differed from the number in Column H – one being lower and the other being higher.

- Column I, titled "Square Footage Available for Rent to Advisors", sets out the total space in the financial centre available to rent to Advisers, including any such space that is not occupied, which for Toronto East is 5,838 square feet. This is the space shown in yellow on the diagram of the Toronto East financial centre at Tab 6 of the Joint Book. The percentage of vacant space is indicated in an undesignated adjacent column titled "Vacant Space As a % of Total Area under Lease" as being 13.06%. Mr. Coutu acknowledged that there was a small discrepancy between the area stated in Column I of 5,838 square feet and the area stated on the diagram for Toronto East at Tab 6 of the Joint Book of 5,948 square feet. He suggested that the amount in Column I represented how much of the yellow space on the diagram was actually available to rent to Advisers.

- The undesignated column titled "Vacant Space As a % of Total Area under Lease" sets out the vacancy rate in the financial centre as a percentage of the total area under lease, which for Toronto East is 13.06%.

- Column J, titled "Square Footage of Specific Common Elements Attributed to Advisors", sets out the portion of the space used by Sun Life and the Advisers (the space shown in pink on the diagram at Tab 6 of the Joint Book) that is allocated to the Advisers, expressed in square feet. The allocation was done on a room-by-room basis, but in the aggregate 65% of the jointly used area was allocated to the Advisers, which in Toronto East represented an area of 534 square feet. For financial centres that were not measured, the aggregate jointly used space was assumed to be 664 square feet, which was the average amount of such space in the 11 financial centres that were measured. The amount allocated to Advisers was 65% of 664 square feet, or 431 square feet. The rationale for the allocation of the jointly used space is found at Tab 4 of the Joint Book, where it is stated:

  > *Telecommunications Room* – This room handles the equipment and services related in order to service the offices with their telecommunication needs. Using the average of advisor occupied space as a percentage of total occupied space.
  >
  > *Closing Room* – This is a meeting room where the independent advisors meet with clients to finalize/close sales. This is allocated to the advisors at a 100% [*sic*]
  >
  > *Reception Area Seating* – This area is allocated to the advisors using the average of advisor occupied space as a percentage of total occupied space.
  >
  > *Supply Room* – Area for storage of stationary [sic] and supplies. This is allocated to the advisors at a rate of 50% rather than the average rate.
  >
  > *Kitchen* – This area is allocated to the advisors using the average of advisor occupied space as a percentage of total occupied space.
  >
  > *Touch Down Station* – An area for agents that do not occupy an office in the building. There is no consideration received for this space from the advisors. Therefore this are [sic] has been fully allocated to management.

- Column K, titled "Total measured footage attributed to advisors", is the sum of Columns I and J, which for Toronto East is 6,372 square feet.

- An undesignated column titled "Common Area Gross-Up Based on Floorplan" sets out the interior corridor area as a percentage of the total measured area of the financial centre. In the case of Toronto East, the calculation is 2,176 square feet divided by 10,461 square feet, which yields 20.80%. This column is relevant only to the 11 financial centres that were measured. For the other financial centres, 12% is used, which, Mr. Coutu noted, was lower than the 26.02% average for the measured financial centres.

- Column L, titled "Interior common area Gross Up Factor", is column K multiplied by a percentage that is intended to attribute a portion of the interior corridor area to the Advisers. The column's description of the math is not correct but I have assumed from the numbers presented that it should read K multiplied by one plus either 12% or the percentage based on the actual measurements as determined in the immediately preceding column). The calculation of the gross-up percentage for the measured financial centres is described in more detail in Tab 5 of the Joint Book. The result stated for Toronto East is 7,697 square feet, which is 6,372 times 1.208.

- Column M, titled "Straight Ave Building Gross Up Factor" sets out as a percentage the ratio of the common building area attributed to Sun Life under the relevant lease to the useable floor area as set out in the lease. For example, the lease for the Brossard financial centre reproduced at Tab 7, page 27 of the Joint Book states in section 1.01 that the leased area consists of 8,855 square feet of useable area and an additional 1,328 square feet of building common area as described in section 8.01 g), for a total area under lease of 10,183 square feet. This yields a percentage ratio of 1,328 divided by 8,855 or approximately 15%. If the lease did not support such a calculation then, Mr. Coutu testified, 5% was used. The gross-up used for Toronto East is 12%. A note accompanying the column states:

  > The building gross-up factor is a specific factor provided by the landlord to account for building common spaces. In those instances where Sun Life office [*sic*] are located in storefronts, there is [*sic*] no building common spaces. However in these instances, there is typically additional interior common space. As a result Sun Life has found that the common space gross-up is insufficient and adds an additional 5% factor. Both the Interior Common Space and Building Grossup [*sic*] is [*sic*] included in the total area under lease.

- Column N, titled "Building Gross Up Footage", sets out in square feet the result of multiplying column L by column M, which for Toronto East is 924 square feet.

- Column O, titled "Total footage with Building Gross up", sets out the sum of column L and column N and is intended to represent the total floor area attributable to the Advisers. The result stated for Toronto East is 8,621 square feet, which is 7,697 plus 924.

- Column P, titled "% of Inputs Allocatable to Advisors", sets out the result, as a percentage, of dividing column O by column H. For Toronto East, the calculation is 8,621 divided by 16,550, which yields 52.09%.

- Column Q, titled "GST Allocated to Advisors", sets out the result in dollars of multiplying column P by column G. For Toronto East, the calculation is 52.09% of $33,324.25, which for Toronto East is $17,358.94.[5]

[20] In a nutshell, Sun Life determined what it considered to be the area acquired for the use of Advisers in each financial centre (including the area of any vacant space held for such use) and then grossed up that area by three factors intended to attribute to the Advisers their share of (1) the jointly used spaces within the financial centre, (2) the internal corridors and hallways of the financial centre, and (3) the building common areas attributed to Sun Life in the lease for the financial centre (for clarity, I will refer to these three areas collectively as the common-use space). The total so allocated to the Advisers was then divided by the total area under lease to provide the percentage of the GST paid by Sun Life on rent and leasehold expenditures that was attributable to the Advisers.

[21] Mr. Coutu testified that the foregoing methodology used for 2004 was also applied to the 2005 and 2006 periods. The calculations for these periods are found at Tabs 2 and 3 of the Joint Book, respectively. Mr. Coutu testified that for 2007 and subsequent years, Sun Life used actual measurements for each of the financial centres and that, as a result, the total ITCs claimed by Sun Life increased. According to Mr. Coutu, this was because of the conservative percentages used to take into account the common-use space. The actual percentages were on average higher, with the result that the percentage of the square footage under lease attributed to the Advisers was on average higher when using actual measurements for each financial centre.

[22] The witness for the Respondent, Mr. Lazure, testified that his on-site audit of the Brossard financial centre confirmed that the Advisers rented a specific office that was accessed through the main entrance of the financial centre and that the Advisers had access to the common-use space.

[23] Mr. Lazure testified that Revenu Québec had no issue with the measurements taken by Sun Life. The issue for Revenu Québec revolved around the perceived attempt by Sun Life to claim ITCs in respect of space that was leased by Sun Life from a third party in order for Sun Life to carry on a financial services business. Specifically, the view of Revenu Québec is that the only evidence of a use of that space by Sun Life to provide a taxable supply is found in the subleasing of specific office space to Advisers. Any space that was not sublet to Advisers was being used by Sun Life in the course of its financial services business and not for the purpose of making taxable supplies and therefore it was unreasonable for Sun Life to claim ITCs in respect of any of that space.

A. The Appellant's Position

[24] Sun Life submits that the ITCs that may be claimed by it in respect of the receipt of taxable supplies from the third party landlords are not limited to the GST collected from the Advisers as a result of the taxable supply of

office space made by it to the Advisers. Rather, the determination of the ITCs is based on a narrow independent purpose test that focuses on each particular supply in order to determine if it is being made in the course of a commercial activity and can be tracked to a particular input. The purpose of the particular input determines whether the input is in relation to the making of taxable or of exempt supplies. Where a registrant such as Sun Life acquires or uses inputs (the Leased Space) for the purpose of making both taxable supplies (subleasing a portion of the Leased Space to the Advisers) and exempt supplies (selling Financial Products), the ETA limits the claim for ITCs to reflect only the GST paid on the inputs acquired for the purpose of making taxable supplies. It is up to Sun Life, however, to determine an allocation method that is fair and reasonable and used consistently throughout the year. There is no rule that requires the use of a specific method, and once a fair, reasonable and consistent method has been chosen by Sun Life, the Minister is not entitled to replace that method with one of her own choosing simply because she believes it is a better method or even the best method.

[25] Sun Life submits that the method chosen by it was fair and reasonable because, to determine the amount of the ITCs, it relied on the area of the space acquired for the purpose of supply to the Advisers. The inclusion of the vacant space in the area acquired for the purpose of making taxable supplies was fair and reasonable for three reasons. First, Sun Life intended to sublet the vacant space to the Advisers. Second, the inclusion of that space on the basis of intended use was consistent with the text and context of subsections 169(1) and 141.01(2) of the ETA. Finally, the vacant space accounted for only 11% of the total space leased by Sun Life. The inclusion of the three gross-ups in the area acquired for the purpose of making taxable supplies was fair and reasonable because without these adjustments the result would present an unrealistic view of how the property was being used by the Advisers. In addition, Sun Life submits that the gross-ups were consistent with the approach taken by the Tax Court of Canada in *Bay Ferries Limited v. The Queen*, 2004 TCC 663 and by the Federal Court of Appeal in *Ville de Magog v. The Queen*, 2001 FCA 210.

B. The Respondent's Position

[26] The Respondent states that the facts and the numbers in this appeal are not in dispute. The Respondent's position is simply that the method chosen by Sun Life is not a "fair and reasonable" method for determining the extent to which the acquisition of the Leased Space was for the purpose of making taxable supplies for consideration. The Respondent submits that the primary business of Sun Life is the rendering of financial services, which is an exempt supply under the ETA and does not give rise to ITCs. Sun Life also carries on a side business which consists of subleasing office space to Advisers.

[27] The Respondent submits that, while there is no doubt that the subleasing of the office space to Advisers is a taxable supply that entitles Sun Life to ITCs, the method chosen to determine those ITCs does not reflect the fact that Sun Life's efforts are focused not on the subleasing of the space but on the recruitment of Advisers, who may or may not sublease space from Sun Life. The intention to sublease the vacant space is thus secondary to the intention to recruit Advisers to sell Financial Products for Sun Life. The Respondent argues that the Advisers play two roles. The first is as tenants of Sun Life. The second is as workers helping Sun Life carry on its business of selling Financial Products. In the Respondent's view, the allocation of the common space to the taxable supply of space to the Advisers fails to recognize that the Advisers are using the common space not because they are tenants but because they are selling Financial Products on behalf of Sun Life. The Respondent says that this is most evident in the allocation of the closing room space to the taxable supply of space to the Advisers. When using that space, the Adviser is not acting as a tenant but as a seller of Financial Products for Sun Life.

[28] To support this position, the Respondent points to the fact that the percentage of vacant space is considerable when compared to the space actually subleased to the Advisers and that there was no evidence of any attempt by Sun Life to downsize the space rented by it from the third party landlords. As well, Sun Life admitted that it would not rent the vacant space to anyone other than an Adviser. The Respondent submits that this situation is therefore different from the case of a landlord who is in the business of subleasing space but has vacancies due to economic conditions. The Respondent also states that Sun Life's assertion that all the vacant space is intended for Advisers ignores the possibility that the space could be used for another purpose, such as occupation by an employee of Sun Life.

III. The Law

[29] The statutory provisions of the ETA relevant to the issue in this case are as follows:

123(1)

"commercial activity" of a person means

(*a*) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person . . .

"exempt supply" means a supply included in Schedule V;

Schedule V, Part VII - Financial Services

1. A supply of a financial service that is not included in Part IX of Schedule VI.

"taxable supply" means a supply that is made in the course of a commercial activity;

165.(1) Imposition of goods and services tax — Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply.

169.(1) General rule for [input tax] credits — Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:

$$A \times B$$

where

A is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the person during the reporting period or that is paid by the person during the period without having become payable; and

B is

. . .

(*c*) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

141.01 [Allocation of input tax credits] - (1) Meaning of "endeavour" — In this section, "endeavour" of a person means

(*a*) a business of the person;

(*b*) an adventure or concern in the nature of trade of the person; or

(*c*) the making of a supply by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.

. . .

(2) Acquisition for purpose of making supplies [limitation on ITCs] — Where a person acquires or imports property or a service or brings it into a participating province for consumption or use in the course of an endeavour of the person, the person shall, for the purposes of this Part, be deemed to have acquired or imported the property or service or brought it into the province, as the case may be,

(*a*) for consumption or use in the course of commercial activities of the person, to the extent that the property or service is acquired, imported or brought into the province by the person for the purpose of making taxable supplies for consideration in the course of that endeavour; and

(*b*) for consumption or use otherwise than in the course of commercial activities of the person, to the extent that the property or service is acquired, imported or brought into the province by the person

(i) for the purpose of making supplies in the course of that endeavour that are not taxable supplies made for consideration, or

(ii) for a purpose other than the making of supplies in the course of that endeavour.

(3) Use for purpose of making supplies — Where a person consumes or uses property or a service in the course of an endeavour of the person, that consumption or use shall, for the purposes of this Part, be deemed to be

(*a*) in the course of commercial activities of the person, to the extent that the consumption or use is for the purpose of making taxable supplies for consideration in the course of that endeavour; and

(*b*) otherwise than in the course of commercial activities of the person, to the extent that the consumption or use is

(i) for the purpose of making supplies in the course of that endeavour that are not taxable supplies made for consideration, or

(ii) for a purpose other than the making of supplies in the course of that endeavour.

(5) Method of determining extent of use, etc. — Subject to section 141.02, the methods used by a person in a fiscal year to determine

(*a*) the extent to which properties or services are acquired, imported or brought into a participating province by the person for the purpose of making taxable supplies for consideration or for other purposes, and

(*b*) the extent to which the consumption or use of properties or services is for the purpose of making taxable supplies for consideration or for other purposes,

shall be fair and reasonable and shall be used consistently by the person throughout the year.

[30] The current version of subsection 141.01(5), contained in the Appellant's Book of Authorities, references section 141.02, and was enacted in 2010 effective for fiscal years that begin after March 2007. Section 141.02 sets out special rules for allocating the ITCs of financial institutions such as Sun Life. These rules were not applicable during the periods in issue in this appeal.

IV. Analysis

[31] The general scheme and purpose of the GST provisions of the ETA were explained by the Federal Court of Appeal in *CIBC World Markets Inc. v. The Queen*, 2011 FCA 270, [2013] 3 F.C.R. 3 as follows:

A. The statutory scheme: an overview

5 I shall begin with a broad, conceptual review of the general scheme and purpose of the GST provisions of the Act. This will provide context for interpreting the specific provisions at issue in this appeal.

(1) The purpose of the GST provisions of the Act

6 The GST is a consumption tax. The GST provisions of the Act show that it is meant to be paid by the final consumers of goods and services. An early technical paper issued by the Minister on the GST confirms this: Canada, Department of Finance, "Goods and Services Tax: Technical Paper" (Ottawa: Department of Finance, 1989).

(2) The key liability provision: subsection 165(1) of the Act

7 Subsection 165(1) of the Act sets out a general rule: those who receive services or property, such as goods, in the course of a commercial activity (known under the Act as a "taxable supply") are liable to pay GST.

(3) Who is subject to GST

8 The general rule in subsection 165(1) of the Act applies to all, even those who are not final consumers.

9 In particular, each recipient of taxable goods and services is potentially liable to pay GST, even if it, as an intermediary, ultimately delivers those goods and services to others. For example, a wholesaler may supply goods to a retailer who supplies them to a consumer. The retailer is liable to pay GST under the general rule in subsection 165(1).

10 Were the matter left there, the GST would lose its character as a consumption tax imposed on the final consumers of goods and services. It would attach, full force, to each party in a chain of transactions culminating in the final receipt by consumers.

(4) Input tax credits: the general concept

11 One way in which the Act prevents this consequence is by giving parties credits for "inputs" that they receive.

12 For example, for the purpose of the selling of goods to consumers, a retailer might receive "inputs," such as inventory. That "input" to the retailer is necessary in order for it to make a supply of the goods to the consumer. Depending on the particular business, there may be all sorts of necessary "inputs."

13 Obviously, if, in the example above, the retailer were not given credit for the GST paid on inputs needed for the making of a taxable supply of goods to a consumer, the GST would be imposed full force on it and, for that matter, on every intermediary in the chain of distribution. If that happened, the GST would lose its character as a consumption tax imposed on the final consumer of goods and services.

14 To achieve the purpose of taxing the final consumers of goods and services, the Act allows tax credits for inputs received by parties to make an onward taxable supply. These credits are called input tax credits.

15 The input tax credits, as explained above, ensure that the fundamental character of the GST as a consumption tax on final consumers is maintained. In the words of the Minister:

> A fundamental principle underlying the GST/HST is that no tax should be included in the cost of property and services acquired, imported or brought into a participating province by a registrant to make taxable supplies...in the course of the commercial activities of the registrant. To ensure that a property or service consumed, used or supplied in the course of commercial activities effectively bears no GST/HST, registrants are generally eligible to claim an input tax credit (ITC) for the GST/HST paid or payable on such property or service. Consequently, the ITC enables each registrant to recover the tax incurred in that registrant's stage of the production and distribution process.

(Canada Revenue Agency, "GST Memorandum 8.1 — General Eligibility Rules" (May 2005) at paragraph 1.)

(5) Input tax credits: a further complication

16 A further complication needs to be mentioned. Some supplies under the Act are not taxable, because they do not fall under section 165(1) of the Act, or they are otherwise exempt under the Act.

17 A person may be a supplier of both taxable and exempt goods or services, but is entitled to input tax credits only for inputs relating to the taxable supplies.

18 Where a person is a supplier of both taxable and exempt supplies, a method must be found to limit the claim for input tax credits to reflect only goods and services acquired or used for making taxable supplies.

19 The Act solves this problem by allowing parties (in subsection 141.01(5)) to adopt a general allocation method.

20 Not all methods are acceptable. Subsection 141.01(5) provides that the method must be "fair and reasonable" and must "be used consistently by the person throughout the year."

[32] The starting point in this case is subsection 169(1). For Sun Life to claim the ITCs in issue, the space leased from third party landlords to house the financial centres must have been acquired for consumption, use or supply in the course of commercial activities of Sun Life. The commercial activities of Sun Life include any

business carried on by Sun Life, except to the extent to which the business involves the making of exempt supplies by Sun Life. The definition of "commercial activity" is worded in such a way that only the portion of any business that involves the making of exempt supplies is excepted from the definition. The provision of financial services by Sun Life is an exempt supply unless the service is included in Part IX of Schedule VI.

[33] Where Sun Life acquires property or a service for consumption or use in the course of an endeavour,[6] as it has done here,[7] subsection 141.01(2) deems it to have acquired the property or service for consumption or use in the course of commercial activities of Sun Life to the extent that the property or service is acquired by Sun Life for the purpose of making taxable supplies for consideration in the course of that endeavour. On the other hand, to the extent that the property or service is acquired by Sun Life (i) for the purpose of making supplies in the course of that endeavour that are not taxable supplies made for consideration, or (ii) for a purpose other than the making of supplies in the course of that endeavour, the property or service is deemed to have been acquired by Sun Life for consumption or use otherwise than in the course of commercial activities of Sun Life.

[34] Subsection 141.01(2) focuses on Sun Life's purpose in acquiring property or a service. It is up to Sun Life to explain its purpose in acquiring property or a service, and that explanation must be neither improbable nor unreasonable (see, generally, *Canada v. Placer Dome Inc.*, 1996 CanLII 4094 (FCA), [1997] 1 F.C. 780 (FCA) at paragraph 19).

[35] Subsection 141.01(5) presupposes that a particular acquisition has more than one purpose and in such a case requires the person acquiring the property or service to determine the extent to which the property or service is acquired for the purpose of making taxable supplies for consideration or for other purposes. The method used to make this determination must be fair and reasonable and must be used consistently throughout the year. Subsection 141.01(5) thus requires that the method chosen by Sun Life to determine the extent to which a dual-purpose property or service is acquired by it for the purpose of making taxable supplies for consideration or for other purposes be fair and reasonable.

[36] One definition of the word "fair" in the *Oxford English Dictionary* (Second Edition) suggests that the approach taken by Sun Life must be equitable, honest and impartial (see "fair", adverb, (definition) 4.), which in my view is an appropriate interpretation of the word as used in subsection 141.01(5). The use of the word "justes" in the French version of the provision supports this interpretation.

[37] The definition of the word "reasonable" in the *Oxford English Dictionary* (Second Edition) that is in my view most appropriate is A.2.a: "Having sound judgement; sensible, sane. . . . Also, not asking for too much." The use of the word "raisonnables" in the French version of the provision supports this interpretation.

[38] The use of a reasonableness requirement in tax legislation has been considered in other contexts. In *Bailey v. M.N.R.*, [1989] T.C.J. No. 602 (QL), 89 DTC 416, the Court stated (at page 420):

> What is "reasonable" is not the subjective view of either the respondent or appellant but the view of an objective observer with a knowledge of all the pertinent facts: *Canadian Propane Gas & Oil Limited v. M.N.R.*, 73 DTC 5019 per Cattanach J. at 5028.

[39] In *Maege v. The Queen*, 2006 TCC 117, the Court adopted the general approach to determining reasonableness set out in *Tsiantoulas v. Canada*, [1994] T.C.J. No. 984 (QL), where the Court stated at paragraph 11:

> Reasonableness is a question of fact and requires the application of a measure of judgement and common sense.

[40] I can see no reason why the general approach to determining reasonableness in these cases would not also apply to determining whether a particular method is "fair and reasonable". That is to say, what is "fair and reasonable" is a question of fact and requires the application of a measure of judgment and common sense. The determination is not based on the subjective view of either the Appellant or the Respondent but is based on the view of an objective observer with knowledge of all the pertinent facts. It is also important to recognize that the tax authorities cannot simply substitute their approach for that of Sun Life and that there may be more than one method that is fair and reasonable in the circumstances (see *Ville de Magog v. The Queen*, *supra*).

V. Conclusion

[41] Mr. Coutu testified that one purpose for which Sun Life acquired the Leased Space was to rent a portion of that space to Advisers (that is, one purpose for acquiring the Leased Space was to make taxable supplies for

consideration in the course of Sun Life's business). The objective facts support this stated purpose, as offices in the Leased Space were rented by Sun Life to Advisers who in turn used the space to conduct their own businesses, which included the sale of Financial Products. The evidence is that Leased Space was also acquired by Sun Life for the purpose of making exempt supplies in the course of its financial services business (that is, for the purpose of making supplies in the course of its business that are not taxable supplies made for consideration).

[42] The dual purpose for the acquisition of the Leased Space requires Sun Life to adopt a method for determining the extent to which the Leased Space was acquired for the purpose of making taxable supplies for consideration or for other purposes. The method chosen must be fair and reasonable and must be used consistently throughout the year. The consistency requirement is not in issue in this case.

[43] Initially, Sun Life claimed ITCs in respect of the portion of the Leased Space subleased to the Advisers on the basis of the rent paid by the Advisers for the subleased space. This resulted in a claim for ITCs by Sun Life essentially equal to the amount of GST collected from the Advisers on the rent. According to Mr. Coutu, the rent charged to the Advisers was grossed up to estimate the effective cost to Sun Life of the subleased space. Hence, this method did take into account the GST paid by Sun Life on a portion of the common-use space because the rent charged to the Advisers reflected a portion of the cost of that space to Sun Life. In other words, by including a portion of the cost of the common-use space in the calculation, the original method assumed that a portion of the common-use space was acquired by Sun Life for the purpose of making taxable supplies for consideration in the course of its business.

[44] The original method did not, however, take into account the GST paid by Sun Life on the vacant space that Sun Life says was reserved for the use of Advisers, nor did it take into account the GST paid by Sun Life on the portion of the common-use space that might be attributed to the use of that vacant space.

[45] Sun Life replaced this simple method for determining its ITCs with a more complicated method based on the total amount of Leased Space used by, or reserved for, Advisers and a gross-up that Sun Life says attributes an appropriate percentage of the common-use space to that space. The question is whether the new method is fair and reasonable.

[46] It is of note that both methods attribute to a portion of the common-use space the purpose of making taxable supplies for consideration in the course of Sun Life's business. The original method achieved this result because it was based on the rent charged to the Advisers for the subleased space, which in turn was set at a level that was intended to recoup "significantly all" of the effective cost of that space to Sun Life. The effective cost included a portion of the cost of the common-use space. The new method, on the other hand, used measurements and assumptions as to use in order to determine the purpose of acquiring the common-use space. The evidence was that the assumptions were conservative and did not overstate the purpose for acquiring the common-use space. The Respondent did not challenge the accuracy of the measurements used under the new method.

[47] The Brossard financial centre example lease and sublease suggest that the gross-up for common-use space implicit in the rent charged to the Advisers at that financial centre was approximately 1.391 (that is, $32/$23). The gross-up for the same space under the new approach was 1.394 (that is, 7,299 sq ft/5,236 sq ft) in 2004. Although Brossard is only one example, the difference is slight, so it is difficult to see how the inclusion of common-use space under the new method is not fair and reasonable if it was fair and reasonable under the original method. Both methods appear to yield ITCs commensurate with the GST on the true cost to Sun Life of the Leased Space that was sublet to Advisers.

[48] The Respondent argued, however, that the explicit allocation of the common-use space to the taxable supply of space to the Advisers that occurs under the new method fails to recognize that the Advisers are using the common-use space not because they are subtenants but because they are selling Financial Products on behalf of Sun Life. In my view, this argument fails to recognize that the Advisers are independent contractors and that their use of the subleased space is in furtherance of their own business objectives, which include the sale of products other than the Financial Products.

[49] I also note that the Advisers cannot use the subleased space without also using the common-use space. From a practical point of view, it seems somewhat obvious that Sun Life would need to rent common-use space in order to be able to sublet office space to the Advisers, and therefore, attributing that purpose to a portion of the common-use space accords with common sense. The fact that the rent charged to the Advisers reflects the cost of essentially that same portion of the common-use space further supports this observation.

[50] The Respondent also argued that Sun Life's efforts were focused not on the subleasing of the space but on the recruitment of Advisers, which was admitted by Mr. Coutu. I have no doubt that the availability of space to rent would have aided the recruitment of Advisers. However, recruitment was a benefit derived from having space available to rent to Advisers and was not the direct purpose of the available space. In that regard, the situation is similar to that in *London Life Insurance Co. v. The Queen*, 266 N.R. 130 (FCA), where the Court distinguished between the direct purpose for the acquisition of property (supplying leasehold improvements to the landlord) and the indirect (or ultimate) purpose for the acquisition of property (leasing improved premises for a financial services business) and held that the direct purpose governed London Life's claim for ITCs. In this case, the direct purpose of the available space was to rent the space to Advisers and the indirect (or ultimate) purpose of having space available was to aid recruitment and to facilitate the sale of Financial Products.

[51] The major difference between the original method used by Sun Life and the new method is that the new method attributes the purpose of making taxable supplies for consideration to the vacant space reserved for the Advisers as well as to the portion of the common-use space attributable to that vacant space. The attribution of common-use space to the vacant space is not materially different in result from the attribution of common-use space to the subleased space under the original method. Hence, the only real distinction between the original method and the new method is the inclusion of the vacant space itself.

[52] I accept Mr. Coutu's uncontradicted testimony that the vacant space was reserved for the use of Advisers to accommodate the growth of the financial centres. In my view, attributing the purpose of making taxable supplies for consideration to the vacant space is fair and reasonable in the circumstances of this case because it accurately reflects Sun Life's purpose with respect to the direct use of that vacant space. The attribution of common-use space to that vacant space in accordance with the new methodology is fair and reasonable for the reasons already stated in respect of the subleased space.

[53] The Respondent did suggest that the vacant space could be used for a different purpose, such as to house an employee of Sun Life. However, there was no evidence that this in fact occurred during 2004, 2005 or 2006. The evidence was that, if a change in use occurred, the particular vacant space (and its associated common-use space) would be removed from the pool of space reserved for the Advisers such that ITCs would no longer be claimed in respect of that space.

[54] The Respondent also pointed to the amount of vacant space as supportive of her position. However, the fact that there was a significant amount of vacant space reserved for the use of Advisers does not alter Sun Life's purpose in acquiring that space. The amount of vacant space that is required for rental to Advisers is a business judgment that is best left to Sun Life absent a sham or window dressing or similar vitiating circumstances, none of which are present here.

[55] For the foregoing reasons, the appeal is allowed, with costs to the Appellant, and the reassessment made for the reporting period from January 1, 2006 to December 31, 2006 is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Sun Life is entitled to additional ITCs of $1,279,180.49.

Signed at Ottawa, Canada, this 16th day of February 2015.

"J.R. Owen"

Owen J.

CITATION:	2015 TCC 37
COURT FILE NO.:	2012-481(GST)G
STYLE OF CAUSE:	SUN LIFE ASSURANCE COMPANY OF CANADA v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 22, 2014
REASONS FOR JUDGMENT BY:	The Honourable Justice John R. Owen

DATE OF JUDGMENT: February 16, 2015

APPEARANCES:

Counsel for the Appellant:	Justin Kutyan Vern Vipul
Counsel for the Respondent:	Khashayar Haghgouyan

COUNSEL OF RECORD:

For the Appellant:

Name:	Justin Kutyan Vern Vipul
Firm:	KPMG Law LLP Toronto, Ontario

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada

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[1] I note that these three numbers add up to $1,279,180.51, so there is a very small rounding error.

[2] Transcript at pages 50 to 51.

[3] Transcript at pages 25 to 26.

[4] Transcript at page 42.

[5] Some of the numbers on the spreadsheets in Tabs 1, 2 and 3 of the Joint Book appear to reflect rounding by the software program that is not material.

[6] An endeavour of a person is defined in subsection 141.01(1) to mean (*a*) a business of the person, (*b*) an adventure or concern in the nature of trade of the person, or (*c*) the making of a supply by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.

[7] The endeavour in this case is the business of Sun Life. Although the definition of endeavour also includes in paragraph (*c*) the making of a supply of real property, the supply of the Leased Space in this case is part of Sun Life's broader business so there is no need to rely on paragraph (*c*).

TAB 4

Maege v. The Queen, 2006 TCC 117 (CanLII)

Date:	2006-04-28
File number:	2002-2450(IT)G; 2002-2332(IT)G
Other citations:	[2006] 3 CTC 2234 — 60 DTC 2756
Citation:	Maege v. The Queen, 2006 TCC 117 (CanLII), <https://canlii.ca/t/1p3sf>, retrieved on 2022-02-03

Docket: 2002-2332(IT)G

BETWEEN:

NORMA MAEGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of

Lazar Jevremovic (2002-2450(IT)G on December 1, 2005

at Montréal, Québec

Before: The Honourable Justice Gerald J. Rip

Appearances:

Counsel for the Appellant:	Serge Fournier
Counsel for the Respondent:	Anne-Marie Boutin

AMENDED JUDGMENT

Whereas the Judgment and Reasons for Judgment at paragraphs [3] and [45] dated March 24, 2006 contained an error in that the amount allowed as capital gains deductions should have read $35,700;

The Reasons for Judgment are amended accordingly and the Judgment is amended as follows:

The appeals from the assessments made under the *Income Tax Act* for the 1990 and 1991 taxation years are dismissed.

The appeal from the assessment made under the *Income Tax Act* for the 1992 taxation year is allowed and the assessment is referred back to The Minister of National Revenue for reassessment and reconsideration on the basis that the appellant be allowed a capital gains deduction of **$35,700**.

The respondent is entitled to one set of costs together with the appeal of *Lazar Jevremovic and Her Majesty the Queen* (2002-2450(IT)G).

This Judgment is issued in substitution for the Judgment dated March 24, 2006.

The remaining provisions remain in force.

Signed at Ottawa, Canada, this 28th day of April, 2006.

"Gerald J. Rip"

Rip J.

Docket: 2002-2450(IT)G

BETWEEN:

LAZAR JEVREMOVIC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of

Norma Maege (2002-2332(IT)G on December 1, 2005

at Montréal, Québec

Before: The Honourable Justice Gerald J. Rip

Appearances:

Counsel for the Appellant: Serge Fournier

Counsel for the Respondent: Anne-Marie Boutin

AMENDED JUDGMENT

Whereas the Reasons for Judgment at paragraphs [3] and [45] dated March 24, 2006 contained an error in that the amount allowed as capital gains deductions should have read $35,700;

The Reasons for Judgment are amended accordingly.

The appeal from the assessment made under the *Income Tax Act* for the 1990 taxation year is dismissed.

The respondent is entitled to one set of costs together with the appeals of *Norma Maege and Her Majesty the Queen* (2002-2332(IT)G).

This Judgment is issued in substitution for the Judgment dated March 24, 2006.

The remaining provisions remain in force.

Signed at Ottawa, Canada, this 28th day of April, 2006.

"Gerald J. Rip"

Rip J.

Citation: 2006TCC117

Date: 20060428

Docket: 2002-2332(IT)G

BETWEEN:

NORMA MAEGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN:

Docket: 2002-2450(IT)G

LAZAR JEVREMOVIC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Rip, J.

[1] Norma Maege and Lazar Jevremovic appeal income tax assessments in which the Minister of Natural Revenue, in assessing, denied claims by the appellants for investment tax credits and business losses arising from their participation in a partnership under the firm name and style "la société de recherche technologique Botanical/Botanical Technologies Research and Development". However, at the objection stage the assessment was confirmed on the basis, among other reasons, that the partnership was a sham and the appellants had no right to any deduction claimed in respect to the partnership. Also, the property owned by the partnership was a tax shelter and no person filed with the Minister a prescribed form containing, among other things, the identification number for the tax shelter. Here, according to the respondent, pursuant to subsection 237.1(6) of the *Income Tax Act* no amount

in respect of the partnership may be deducted or claimed by either appellant. The respondent had the onus of proving sham and that, the partnership was a tax shelter

[2] Ms. Maege's appeals are from assessments for 1990, 1991 and 1992. Mr. Jevremovic appeals from a 1990 assessment, although he invested in the partnership in 1991 and 1992 as well. The appeals were heard together on common evidence.

[3] At the beginning of the trial, respondent's counsel informed me that the respondent now agrees that Ms. Maege did incur a capital gains deduction of **$35,700** in 1992, which was originally disallowed.

[4] Also, counsel had narrowed the issues to be tried to one issue: whether or not the partnership was a tax shelter. If I find that the partnership was a tax shelter, the appeals will fail and the appellants will abandon all other claims, except for Ms. Maege's claim for a capital gains deduction.

[5] For the years in appeal a "tax shelter" was defined in subsection 237.1(1) of the *Act* as follows:

"tax shelter" means any property in respect of which it may reasonably be considered having regard to statements or representations made or proposed to be made in connection with the property that, if a person were to acquire an interest in the property, at the end of any particular taxation year ending within 4 years after the day on which the interest is acquired,	Bien pour lequel il est raisonnable de considérer, à la lumière de déclarations ou annonces faites ou envisagées en rapport avec ce bien, que, si une personne acquérait une part dans ce bien, le montant visé à l'alinéa *a*) excéderait le montant visé à l'alinea *b*) à la fin d'une année d'imposition donnée se terminant dans les quatre ans après cette acquisition:
(a) the aggregate of all amounts each of which is	a) le total des montants dont chacun représenterait:
(i) a loss represented to be deductible in computing income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, or	(i) une perte qui est annoncée comme étant déductible dans le calcul du revenu, au titre de cette part, et qui pourrait être subie par la personne ou attribuée à celle-ci pour l'année donnée ou pour une année d'imposition antérieure, ou
(ii) any other amount represented to be deductible in computing income or taxable income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, other than any amount included in computing a loss described in subparagraph (i),	(ii) un montant qui est annoncé comme étant déductible dans le calcul du revenu ou du revenu imposable, au titre de cette part, et qui pourrait être engagé par la personne ou attribué celle-ci pour l'année donnée ou pur une année d'imposition antérieure, à l'exclusion d'un montant inclus dans le calcul d'une perte visée au sous-alinéa (i);
would exceed	
(b) the amount, if any, by which	b) l'excédent éventuel du coût de cette part pour la personne à la fin de l'année donnée sur la valeur totale des avantages visés par règlement que la personne ou toute personne avec laquelle elle a un lien de dépendance pourrait recevoir, directement ou indirectement, au titre de cette part.
(i) the cost to the person of the interest in the property at the end of the particular year,	
would exceed	
(ii) the aggregate of all amounts each of which is the amount of any prescribed benefit that is expected to	

be received or enjoyed directly or indirectly in respect of the interest in the property, by the person or person with whom the person does not deal at arm's length

but does not include property that is a flow-through share or a prescribed property.

Les actions accréditives et les biens visées par règlement ne sont toutefois pas considérés comme des abris fiscaux.

[6] A "prescribed benefit" is described in subsection 231(6) of the regulations to the *Act*. The portions of subsection 231(6) relevant to the appeal at bar are:

(6) For the purposes of paragraph (b) of the definition "tax shelter" in subsection 237.1(1) of the Act, "prescribed benefit" in relation to a tax shelter means any amount that may reasonably be expected, having regard to statements or representations made in respect of the tax shelter, to be received by or made available to a person (in this subsection referred to as "the purchaser") who acquires an interest in the tax shelter, or a person with whom the purchaser does not deal at arm's length, which receipt or availability would have the effect of reducing the impact of any loss that the purchaser may sustain by virtue of acquiring, holding or disposing of the interest in the tax shelter, and includes such an amount.

(a)...

(b) that the purchaser or a person with whom the purchaser does not deal at arm's length is entitled at any time to receive, directly or indirectly, or to have available.

(i) as a form of assistance from a government, municipality or other public authority, whether as a grant, subsidy, forgiveable loan, deduction from tax or investment allowance, or as any other form of assistance, or...

(6) Pour l'application de l'alinéa *b)* de la définition d' « abri fiscal » au paragraphe 237.1(1) de la Loi, l'avantage à recevoir au titre d'une part dans un abri fiscal est un montant que, compte tenu des déclarations ou annonces faites au sujet de cet abri fiscal, la personne qui acquiert cette part - appelée « l'acheteur » au présent paragraphe - ou une personne avec laquelle l'acheteur a un lien de dépendance peut raisonnablement s'attendre à recevoir ou à avoir à sa disposition, ce qui a pour conséquence de réduire l'effet d'une perte que l'acheteur pourrait subir en acquérant ou en détenant cette part ou encore en disposant. Sont notamment des avantages:

a)...

b) le montant que l'acheteur ou une personne avec laquelle il a un lien de dépendance a à un moment donné le droit de recevoir ou d'avoir à sa disposition, directement ou indirectement:

(i) soit à titre d'aide fournie par un gouvernement, une municipalité ou un autre organisme public, sous forme de prime, de subvention, de prêt à remboursement conditionnel, de déduction d'impôt ou d'allocation de placement ou sous toute autre forme...

[7] Mr. Jevremovic is a chemical engineer with a particular expertise in water treatment and environmental engineering. Ms. Maege is a professional accountant with a CMA designation and a Master's degree in Business Administration. She began to invest in Botanical Technologies in 1989, and continued to do so through 1992.

[8] Mr. Jevremovic met Mr. Nelson, a businessman who was married to Ms. Maege, by happenstance, and they got to know each other well when Mr. Jevremovic rented office space in the same facility as Mr. Nelson's company

"Thermactive". According to Ms. Maege, Mr. Jevremovic was subsequently engaged by Mr. Nelson to help with the engineering of solar energy and environmental conservation technology for greenhouse technologies being developed by Mr. Nelson's companies.

[9] In late 1990 Mr. Nelson approached Mr. Jevremovic about becoming a partner in Botanical Technologies. Botanical Technologies co-operated with a number of other agencies in the course of its research, including Agriculture Canada, and Ecole Polytechnique, and apparently some of the projects included biotechnology innovations that would work well with patented greenhouse technologies developed by Thermactive. (Mr. Nelson did not testify.) Funding for Botanical Technologies came from federal, provincial, and private sources.

[10] The first project that Botanical Technologies undertook was the development of something called "anthrocynanin", an organic coloring agent derived from plants, which could be used in both food coloring and cosmetics. Mr. Jevremovic testified that he believed there was a strong potential market for the products that Botanical Technologies would be developing, and therefore there was a good prognosis for profit in the medium to long term, echoing the estimates stated in the business plan. This view was supported somewhat by Ms. Maege's testimony that certain synthetic coloring agents had been banned by the government around the time that Botanical Technologies began developing anthrocynanin, indicating market potential for suitable replacement products. Mr. Jevremovic indicated that all the partners knew there were inherent risks in the investment, but they had confidence in the earning potential of the research over time. Additionally he indicated that he had a keen interest and expertise in the scientific research which also attracted him to the partnership, an interest echoed by Ms. Maege.

[11] Mr. Jevremovic testified that losses in the first two to three years of Botanical Technologies "anthrocynanin" project were understandable since this was a "research" phase and losses were normal within that timeframe. However, after two years of work the researchers could not overcome technical problems and as a result the partners delayed the solicitation of potential clients. The technical problems were eventually overcome, but funding to the project started to disappear by 1992, leading to its demise.

[12] On December 28th, 1990 Mr. Jevremovic invested $10,000 in Botanical Technologies, claiming a net business loss of $10,000, an investment tax credit of $1,480, and a Quebectax credit of $3,614. On December 31st, 1991 he invested $15,000, claimed a business loss for the year of $15,000, obtained an investment tax credit of $1,428, and a Quebec tax credit of $6,574. Ms. Maege first invested $20,000 on December 28th, 1989, $15,000 on December 28th, 1990, $22,500 on December 27th, 1991, and $13,235 on December 30th, 1992. She claimed losses in the amounts of the investments, and her corresponding share of the tax credits as well (the credits enjoyed appear to equal $3,170 and $4,149 for the 1989 tax year: $2,215 and $5,408 for the 1990 tax year: $2,142 and $9,861 for the 1991 tax year: and $1,860 and $4,832 for the 1992 tax year.)

[13] In terms of the timing of the investments Mr. Jevremovic stated that in 1990 he held back on investing until he received money from a severance package; in 1991 he held back until year end for cash flow purposes. When asked about their late-in-the-year contributions to the partnership Ms. Maege stated that this was standard in the partnership. Apparently the expenses incurred by Botanical Technologies, including salaries for researchers and technicians, would be paid by the "sister" company, Thermagro, during the year, then near year-end a "cash-call" would be made to get people to invest in Botanical Technologies to pay off those "debts". It appears that the parties purchased their interests in Botanical Technologies generally with payments of ten per cent in cash and the balance by promissory note, although Mr. Jevremovic believes he paid for his investment in full by cheque without a note.

[14] According to Ms. Maege, the division of the profits and losses of the partnership was done on a *pro rata* basis according to the partner's participation or contribution for the year. Partners who did not contribute any money in a particular year would not receive any tax benefit from the partnership for that year. Ms. Maege also echoed Mr. Jevremovic's testimony about the expectation of short-term losses and medium to long-term income.

[15] When asked about whether or not she made "statements or representations" about the losses and credits available to investors such as Mr. Jevremovic, Ms. Maege confirmed that she had done so; it was her responsibility to explain to partners how things would work financially, including the availability of scientific research and development credits. Documentary evidence, in the form of the Offering Memoranda for the relevant tax years, was introduced to confirm that investors were informed in writing about the possibility of enjoying deductible losses as well as tax credits through participation in the partnership.

[16] Ms. Maege was examined for discovery by counsel for the respondent. Counsel questioned Ms. Maege with respect to the Offering Memorandum:

Q. **[30]** At the last paragraph of the first page it's stated:

"That as an incidental consideration was the possibility to deduct the tax losses and the investment tax credit."

A. Yes.

Q. **[31]** That was known by the investor, was that known by the investors at the time they put money in it?

A. Yes, that was an opportunity for them to obtain a tax credit and a write-off as a, as an assistance to them in making their investments and covering their investment cost, ...

[17] At trial, Ms. Maege indicated that perhaps these answers were not quite correct, and that she could not say for sure what investors understood about losses and credits when they invested in the partnership.

[18] Later on, counsel questioned Ms. Maege on how the partners' contributions would be spent by the partnership:

Q. **[194]** Was that the plan from the beginning, that a hundred percent (100%) of the investments would be spent in each year?

A. Yes, that was the plan.

Q. **[195]** And, of course, that would create a business loss?

A. Yes.

Q. **[196]** Was that known at the beginning, that each partner would have a...

A. That was, that was anticipated, yes, it was anticipated as a, reconferred by the law as we understood it.

Q. **[197]** So they expect, they anticipated a hundred percent (100%) write-off of their investment in that year?

A. Yes, they did.

Q. **[198]** And they also expected the investment tax credit with regard to that; is that correct?

A. Yes.

[19] Ms. Yolaine Gendron, an auditor with the Canada Revenue Agency, who was in charge of the appellants' files at the Appeals level, testified that she concluded that the partnership was a tax shelter since the appellants anticipated from the outset they would receive tax credits and their annual investment costs would be written off each year. She was also influenced by the fact the investments were made near the end of each year, the losses claimed were equal to the amounts invested and the tax credits were allocated to partners in the proportion to the amount of capital a partner contributed.

[20] Ms. Gendron reviewed the documentation included in the appellants' tax returns, including reconciliations of each partner's capital account as well as partnership information returns for various years. In 1989 the total capital contributed, $100,000, representing subcontract costs, equaled the income loss of the partnership. In 1989 Ms. Maege had a 20 per cent interest in the partnership, having contributed $20,000.

[21] Ms. Maege was the contact person the CRA, or its predecessor, Revenue Canada, was to contact for partnership information.

[22] The partnership's claim for Scientific Research and Experimental Development Expenses ("SRED") for 1989 included a total of $100,000 of current and capital expenditures of which $79,254 were qualified for investment tax credit purposes and $20,746 were amounts of government and non-government assistance and contract payments in respect of research and development ("R & D") expenditures.

[23] As a result, in her 1989 federal Quebec tax returns Ms. Maege claimed a net loss from the partnership in accordance with section 37 of the *Act* in the amount of $20,000, a federal SRED investment tax credit of $3,170.16 and a Quebec wage tax credit of $4,149.20. Similar claims, based on their partnership interests were also made by the other partners. A form T5013, statement of partnership income, was accordingly issued to each partner.

[24] The fisc did not reassess Ms. Maege for 1989, said Ms. Gendron, because the year was statute barred. Ms. Gendron produced and reviewed similar documentation for 1990, 1991 and 1992. In 1990, the partnership had

income of $7,020 which was distributed according to the partnership interest held by each partner in the partnership; however, the loss was allocated according to the proportional interest of each partner's capital contribution in 1990.

[25] For example, the partnership had gross income of $7,020 and a net loss of $70,000 in 1990. (Sub contract costs were $77,020.) The total capital contributed by all partners in 1990 was $70,000. Ms Maege contributed $15,000, or 21.4 per cent of the total, and Mr. Jevremovic invested $10,000, or 14.3 per cent of the total. Their allocation of the loss was 21.4 per cent and 14.3 per cent, respectively. The tax credits also allowed on the basis of capital contributed in the year. However, in allocating the income of $7,020, Ms. Maege was allocated $1,404 and Mr. Jevremovic was allocated $140.00, their respective percentage interest in the partnership. Ms. Maege had a 20 per cent interest in the partnership at the end of 1990. (She owned 23 units.) Mr. Jevremovic had a 2 per cent interest in the partnership at the end of 1990. (He owned 2 units.) The same principles of allocation of losses, tax credits and income were also applied in 1991 and 1992[1].

[26] Appellants' counsel's primary submission was that the answer to the question of whether a tax shelter existed depends on the interpretation of opening lines of the definition of "tax shelter" in subsection 237.1(1):

... property in respect of which it may reasonably be considered having regard to statements or representations made or proposed to be made in connection with the property...	Bien pour lequel il est raisonnable de considérer, à la lumière de déclarations ou annonces faites ou envisagées en rapport avec ce bien...

[27] Counsel for the appellant observed that the definition of "tax shelter" uses the words "reasonably considered" and posited that it was not necessarily reasonable to expect that the partners would enjoy tax benefits in the nature of a tax shelter on the facts at bar. A reasonableness test, he suggested, would need to go into the extent of the representations: is it a representation to say that a partner would get a share of a loss and of credits, or does one have to go beyond that to inform a potential partner about potentially disproportionate benefits for a given level of investment? In the appellant's view, statements indicating that a partner in a venture would share in losses and credits would not qualify as a "statement or representation" for the purposes of subsection 237.1(1).

[28] Appellants' counsel stressed that when Ms. Maege bought into the partnership she knew the law as well as a tax lawyer would, and so no statement or representation was made to her or needed to be made to her so as to persuade her to make the investment. She might have made representations to others, but she was not advised by anyone as to the tax benefits of the investment opportunity. According to this line of reasoning, a sophisticated person versed in tax law and business would not be found to be participating in a tax shelter because he or she would not need to receive a detailed explanation of the scheme, while an unsophisticated person who requires a detailed explanation of the scheme would be found to be involved in a tax shelter. Counsel declared that I should look at the intent of the taxpayer: would the parties have invested if there were no tax benefit? In the case at bar the parties would have, in his view. Counsel suggested that this venture was quite unlike a situation in which passive investors blindly put money into an investment opportunity which they do not necessarily understand. Ms. Maege did not act on any person's representations or statements when she invested in the partnership. Mr. Jevremovic was motivated by his science background and hope of profit when he invested.

[29] In terms of Mr. Jevremovic's participation, his counsel stated that it was never explicitly stated to Mr. Jevremovic that he would enjoy tax benefits in the nature of a tax shelter arrangement. He got involved in the project because he liked the business - he was interested in the science aspect of the business - and because he thought there was income potential, not because of losses and credits. He did not see this as a tax shelter.

Analysis

[30] In terms of the financial aspects of an investment and whether or not it is a tax shelter, the provisions defining "tax shelter" can be reduced to a simple equation: there may be a tax shelter if A > (B - C) where A is the aggregate of deductions against income (including losses), B is the amount of the investment or cost, and C is the amount of prescribed benefits received (in this case, tax credits.) Applied to Mr. Jevremovic's 1990 tax year, for example, the calculation would be 10,000 > (10,000 - 5,094), militating towards a finding that the scheme is a tax shelter for the purposes of subsection 237.1.

[31] The emphasis by appellants' counsel on the importance of the phrase "statements or representations" in the definition of a tax shelter, and the corresponding conclusion that a sophisticated taxpayer would not be captured by the provision while an unsophisticated taxpayer would be captured is novel, but untenable. This argument gives insufficient weight to the words "having regard to" in English and "à la lumière" in French, which precede the words "statements or representations" and "déclarations ou annonces", respectively. Administrative policy at the time, outlined in Information Circular 89-4, was that

[t]he definition of what constitutes a tax shelter depends entirely on the reasonable inferences to be drawn from representations made in connection with the property. Representations would include written representations such as those contained in sales brochures or advertisements and verbal representations such as those made in public or private information or sales meetings...	[l]a définition d'un abri fiscal dépend entièrement des conclusion qu'on peut raisonnablement tirer des annonces faites à l'égard du bien. Il pourra s'agir d'annonces écrites, comme des brochures et des annonces publicitaires, ou d'annonces verbales comme des renseignements transmis en public ou en privé, ou au cours de réunions de promotion de vente...

[32] According to the "*Shorter Oxford English Dictionary*"[2] the word "regard" means "to take notice of, bestow attention or notice upon; to give heed to; to look to, consider, [or] take into account."

[33] *Le Petit Robert*[3]defines the word "lumière" as "[c]e qui rend claire, fournit une explication. V. clarté, éclaicissement... et [é]tat de ce qui est visible, évident pour tous. V. Évidence (Au grand jour...)"

[34] On their own, the words "regard" and "lumière" in the definition of "tax shelter" can hardly be construed as mandatory language.

[35] The Ontario Superior Court had occasion to consider the meaning of the phrase "have regard to" in *Concerned Citizens of King v. King (Township)*[4]:

To "have regard to" falls somewhere on the scale that stretches from "recite them then ignore them" to "adhere to them slavishly and rigidly".

[36] If Parliament had intended to make "statements or representations" the critical and definitive aspect of tax shelter schemes they would have not used as equivocal a phrase as "having regard to" or "à la lumière" as a modifier to "statements or representations" and "déclarations ou annonces". In *Fédération des Caisses Populaires Desjardins de Montréal et de L'Ouest-du-Québec v. The Queen*[5], Lamarre J. correctly summarized a fundamental principle of statutory interpretation that the legislature is presumed to say what it means and means what it says:

In response to this first argument by the appellant, I will simply refer to the well-established rule of effectivity in statutory interpretation, which dictates that there be a reason for each word used in a statute. In The Interpretation of Legislation in Canada, 2nd ed., P.-A. Côté writes the following at page 232:	En réponse à ce premier argument de l'appelante, je soulignerai simplement le principe bien établi de l'effet utile en matière d'interprétation des lois, voulant que chaque mot utilisé dans la législation ait sa raison d'être. P.-A. Côté, dans son recueil sur l'Interprétation des lois, 2e éd., écrit ceci à la page 259 :
It must also be assumed that each term, each sentence and each paragraph have been deliberately drafted with a specific result in mind. Parliament chooses its words	En lisant un texte de loi, on doit en outre présumer que chaque terme, chaque phrase, chaque alinéa, chaque paragraphe ont été rédigés délibérément en vue de produire quelque effet. Le législateur est

carefully: it does not speak gratuitously.	économe de ses paroles: il ne 'parle pas pour ne rien dire'.

[37] With reference to tax shelters specifically, Dussault J. wrote in *Maya Inc., v. the Queen*, 2003 TCC 502, 2003 D.T.C. 947 at para. 13 that:

[i]n the definition, the relationship established between the amount deductible within four years from the acquisition of an interest in a property and the cost of that interest reduced by the total value of the prescribed benefits is mainly based on the "statements or representations made or proposed to be made", that is, on the basis of what is proposed to the investor.	...dans la définition, la relation établie entre le montant déductible dans les quatre ans de l'acquisition d'une part dans un bien et le coût de cette part diminué de la valeur totale des avantages visés par règlement est avant tout en fonction des 'déclarations ou d'annonces faites ou envisagées', c'est-à-dire en fonction de ce qui est proposé à l'investisseur.

[38] Parliament modified the phrase "statements or representations" and "déclarations ou annonces" with the equivocal phrase "having regard to" and "à la lumière". We must presume that it did so for a reason. In the context of the foregoing the "statements or representations made or proposed to be made" and "déclarations ou annonces faites ou envisagées" are one possible indicator of whether a tax shelter arrangement exists, but the absence of explicit statements or representations about the investment opportunity is not determinative. Each case will be determined by its own particular facts.

[39] It also appears that in the context of the definition of "tax shelter" a "representation" need not be an explicit written or verbal assertion but can also include a mental or intellectual element, and appears to encompass representations to ones' self. *The Shorter Oxford English Dictionary*[6] defines the word "representation" as:

The action of placing a fact, etc., before another or others by means of discourse; a statement or account, esp. one intended to influence opinion or action; the action of presenting to the mind or imagination; an image thus presented; a clearly-conceived idea or concept.

[40] The role of the mental element in the determination of whether a taxpayer is involved in a tax shelter is further reinforced by the definitions of "propose" or "proposal", which seems to include ones own personal intentions. Again, according to the *Shorter Oxford English Dictionary*[7], the word can mean:

to put forward for consideration; to put before the mind; to state, propound; to set before one's mind as something to be expected; to put forward for acceptance; to put before one's own mind as something that one is going to do; to design, purpose, intend.

[41] The words "déclarations" and "annonces" appear to indicate a communication to the public. *Le Petit Robert* refers to an "action d'annoncer, de faire savoir quelque chose au public, verbalement ou par écrit " in the definition of "annonce". Similarly, in defining the word " déclarations ", *Le Petit Robert* refers to "action de déclarer; discours ou écrit par lequel on déclare". The word " déclarer " is defined as " faire connaître... d'une façon expresse, manifeste ". However, the word " envisager " is defined, in part, by *Le Petit Robert* as:

...Examiner par la pensée, considérer... Prendre en consideration, avoir en vue... Penser (à). Prévoir, imaginer comme possible. *Envisager toutes les éventualities...*

In the French language as well as the English language of this provision, " déclarations " and " annonces " may be contemplated or considered, even if not made.

[42] The determination of whether a tax shelter arrangement exists for the purpose of subsection 237.1(1) is ultimately made on a reasonable basis. As Bowman T.C.J. (as he then was) stated in *Tsiantoulas v. Canada*, [1994] T.C.J. No. 984:

Reasonableness is a question of fact and requires the application of a measure of judgment and common sense.

[43] In this case Ms. Maege is obviously a sophisticated individual with professional credentials. She structured the partnership, and informed the investors about the opportunities for profit, and the financial ramifications of losses, including income deductions and tax credits. Mr. Jevremovic is also a highly educated person with business experience.

[44] The appellants knew that other investments would be fully written-off each year. As to whether they understood the losses, deductions, and credits that would be the result of their investments, Ms. Maege's evidence is dubious, since at trial she contradicted statements she made in her examination for discovery. However, based on the evidence of Ms. Maege and Mr. Jevremovic and their high degree of sophistication it is reasonable to conclude that they knew the extent of the tax benefit that they would enjoy for the years that the partnership was in operation. They knew that their investments would be written-off as to 100 per cent for the tax years in question and they knew the extent of the available credits. There were representations made and proposed to be made in connection with the partnership property that if the appellants acquired interests in the partnership at the end of any particular taxation year ending within four years after the day they acquired the interests they would incur losses and other deductions from income or taxable income and obtain tax credits in excess of their investments. The fact that Ms. Maege did not make statements to herself with respect to the Botanical Technologies is irrelevant. She expected beneficial tax consequences to arise as a result of her investments in the partnership. Mr. Jevremovic was also aware that the investment was a tax shelter.

[45] The appeals of Ms. Maege for 1990 and 1991 and the appeal of Mr. Jevremovic for 1990 are dismissed. Ms. Maege's appeal for 1992 is allowed and referred back to the Minister only to allow her a capital gains deduction of **$35,700**. All with costs to the respondent.

Signed at Ottawa, Canada, this 28th day of April, 2006.

"Gerald J. Rip"

Rip J.

CITATION:	2006TCC117
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JUDGMENT BY:	The Honourable Justice Gerald J. Rip
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JUDGMENT:	**April 28, 2006**
APPEARANCES:	
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Counsel for the Respondent:	Anne-Marie Boutin

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[1] Ms. Gendron prepared for trial schedules for years 1989 to 1992, inclusive, showing the amounts contributed, income, R & D expenses, losses claimed for Quebec tax credits and federal tax credits claimed for the partnership as a whole and for each partner. These schedules were supported by Exhibits produced at trial.

[2] 3rd ed. Vol. II, Clarendon Press: Oxford.

[3] *Le Petit Robert : Dictionnaire alphabétique et analogique de la langue française*, DICTOBERT Inc., Montréal, Quebec, 1993

[4] [2000] O.J. No. 3517.

[5] 2000 DTC 1585. (translation)

[6] *Supra* note 2.

[7] *Supra* note 2.