Docket: 2012-3854(GST)G

BETWEEN:

ALEXANDER COLLEGE CORP.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 19, 2015, at Vancouver, British Columbia

Before: The Honourable Justice K. Lyons

Appearances:

Counsel for the Appellant:	Natasha Reid and Terry Barnett
Counsel for the Respondent:	Jasmine Sidhu and Whitney Dunn

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated July 4, 2011, for the reporting period from July 1, 2010 to September 30, 2010, is dismissed in accordance with the attached Reasons for Judgment.

The parties are to make written submissions as to costs within 30 days of these Reasons.

Signed at Ottawa, Canada, this 2nd day of October 2015.

"K. Lyons"

Lyons J.

Citation: 2015 TCC 238
Date: 20151002
Docket: 2012-3854(GST)G

BETWEEN:

ALEXANDER COLLEGE CORP.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lyons J.

[1] The appellant, Alexander College Corp., operates a private, for-profit, college that is a corporation offering courses of study to students for fees (the "Fees").[1]

[2] The Minister of National Revenue determined that the appellant was not a "university" and reassessed the appellant for GST/HST on the Fees paid by students for courses in the associate of arts degree ("Associate Degree") program for the reporting period July 1, 2010 to September 30, 2010.

[3] The issue is whether the appellant constitutes a "university" as defined in subsection 123(1) of the *Excise Tax Act* (the "*ETA*").[2] The appeal involves the interplay between the *ETA*, the *University Act* (British Columbia), RSBC 1996, c. 468 ("*UA*") and the *Degree Authorization Act* (British Columbia), SBC 2002, c. 24 ("*DAA*").

[4] The appellant contended that the Associate Degree, defined as a "degree" under the *DAA* is a degree-granting institution which is recognized by British Columbia provincial legislation, by universities and colleges within that province, by post-secondary institutions within and outside Canada, and by federal departments or programs. As such, it meets the definition of a "university" under subsection 123(1) of the *ETA*. Therefore, as a university, the Fees paid for courses

(supplied) are exempt from GST/HST under section 7 of Part III of Schedule V of the *ETA (*"section 7")

[5] The respondent takes the position that as a private college granting an Associate Degree, the appellant fails to meet the conditions of a university in that the term "degree" in subsection 123(1) of the *ETA* equates to a baccalaureate degree or higher to qualify as a university. By describing itself as a "university", the appellant is trying to bootstrap itself into Section 7 so that its supplies will be exempt from GST/HST. Finding that a private college is a university will lead to absurd and illogical consequences.

I. Facts

[6] The appellant, formerly Vancouver Central College (the "VCC"), is a private, for profit corporation with its main campus in Burnaby, British Columbia, and a satellite campus on West Hastings, in Vancouver. Sometime after June 2006, VCC changed its name to the appellant. It has 16 instructors and according to its mission statement, it helps newcomers prepare for citizenship through education, prepares students for marketable work skills and lays a foundation for further study.[3]

[7] Dr. Marvin Westrom has a Ph.D. (Education) and has been the President of the appellant since 2003. He testified that in British Columbia, the provincial government, via the Degree Quality Assessment Board (the "Board"), supervises the quality of educational services and the articulation of courses provided by all universities and colleges especially for private colleges.

[8] Whether public or private, a university, college or institute is required to undergo a quality assessment process and meet the standards established by the Board when applying for a new degree not previously granted. Panels report to the Board and the Board makes recommendations to the British Columbia Ministry of Advanced Education ("MAE"). For existing programs, private colleges and private universities are supervised on a regular basis by government, whereas the four public universities, as later defined, self-monitor.[4]

[9] Dr. Westrom had prepared the proposal and application for consent to obtain the Associate Degree and described the process. The first review confirmed the appellant's ability to offer the facilities, financing and the Associate Degree. The second was the program review conducted by the Board which acknowledged the

Associate Degree; it outlined directions and looked at certain details.[5] The Board then made recommendations to the MAE.

[10] In June 2006, VCC received "… a three-year approval of the proposal with the condition that articulation be arranged within two years."[6] The MAE consent, pursuant to subsection 3(1) of the *DAA*, authorized the appellant to provide an associate of arts degree program and grant or confer the two-year Associate Degree to students on completion of certain academic (normalized and specialized) courses. Universities in the United States and colleges in Canada offer a two-year degree using the nomenclature Associate Degree.

[11] Authorization was renewed for the Associate Degree by the MAE for five additional years. It indicated that "The Degree Quality Assessment Board reviewed the proposal at its meeting on June 8, 2009, and found that it met the organization and degree program criteria for private and out-of-province public institutions."[7]

[12] He explained that the appellant's business depends on its students' ability to transfer their credits to public universities such as the University of British Columbia, University of Victoria and Simon Fraser University; thus, the appellant ensures that its courses qualify. The University of British Columbia is the fourth major university in British Columbia (collectively the "four universities"). He characterized the relationship with the four universities as close but subservient.

[13] The authorization from the MAE resulted in the appellant becoming a member of the British Columbia Council on Admissions and Transfer which facilitated the processing of the articulation agreements within the two-year deadline. The appellant developed 47 courses, in conformity with requirements defined by that Council for the Associate Degree. The University of Victoria and Simon Fraser University provisionally accepted the appellant as an institution for the purpose of course articulation associated with the Associate Degree program and many were articulated with the four universities. In September 2007, the appellant held classes. The Application for Renewal indicates that the Associate Degree is accepted for transfer credit at some British Columbia colleges and universities.[8]

[14] Following two years of study, students may choose to transfer the credits from the Associate Degree to another college or ladder towards a four-year baccalaureate degree at one of the four universities. Students check the course equivalencies by consulting the BC Transfer Guide.[9] He stated that many students transferred the credits, some did not.

[15] Respondent counsel read-in excerpts of questions and answers from the transcript of the examination for discovery of the appellant's nominee as follows:

> 178 Q And then there's the Degree Authorization Act which is what the college - - college's authority was granted under - -
>
> A That's right.
>
> 176 Q - - to provide associate degrees?
>
> 177 A Right.
>
> 180 Q And then - - you would agree that that act - - I don't know how familiar you are with it, but in that act, it says that a person can't directly or indirectly refer to itself as a university unless it's authorized - -
>
> A That's right.
>
> 181 Q - - specifically to do so?
>
> A That's right.
>
> 182 Q And the college has never been authorized to do that; is - -
>
> A We are not authorized, and - - and nor would we be authorized. If we applied to DQAB, they wouldn't - -

> 172 Q And there's a similar question I have with respect to - - well, if you turn to page 6 of the glossary. It's in the top right-hand corner. It will say "page 6 of 6."
>
> A Oh.

173 Q And it says there for - - for the definition of "university" it says:

"In BC a post-secondary institution that offers a range of degrees (bachelors, masters and doctorates), post-degree certificates and diplomas and is normally involved in research in addition to teaching."

So, I mean, this is different in the sense that - - because the college doesn't consider itself to be a university other than for the purposes of the Excise Tax Act?

A That's right.

174 Q Okay. And that's - -

A The thing is, the university - - the term "university" is defined - - just as "degree" is defined differently in different places, so is the term "university." British Columbia has a fairly specific meaning, which - - basically being a university implies that research is done at that institution.

175 Q And your understanding, and just to confirm this, there's the University Act, right - -

A Right.

178 Q - - that governs universities like - -

179 A Right.

177 Q - - like UVic, UBC? Yes?

A Yes, that's right.

A. Admissibility of Printouts

[16] At trial, I reserved on a ruling as to whether the appellant could introduce into evidence printouts of official websites of the Government of Canada (the "Printouts" and "Canada").[10]

[17] The appellant indicated that the Printouts were merely to corroborate Dr. Westrom's testimony concerning his understanding of the appellant's admission policy for the off-campus work permit program vis-à-vis Canada's representations to the world through its official website.

[18] The respondent objected to the admissibility of the Printouts on the following bases:

- These were not specifically addressed to anyone;
- While the Printouts bore Canada's logo, they did not bear the actual internet address from which they were obtained;
- It is unclear when the websites were cached;
- These were not introduced by a Canada official who could testify that they were produced by the government. However, the relevant employee would not have to be the individual who actually uploaded the websites;
- The cases of *Thorpe v Honda Canada, Inc.*, 2010 SKQB 39 [*Thorpe*] and *ITV Technologies, Inc v WIC Television Ltd.*, 2005 FCA 96, 251 DLR (4th) 208, aff'g 2003 FC 1056, 239 FTR 203 [*ITV Technologies*], are distinguishable. *Thorpe* dealt with affidavit evidence and internet occurrences of complaints made against Honda Canada, Inc. *ITV Technologies* dealt with internet occurrences of the word "ITV"; and
- The appellant is seeking to introduce the Printouts for the truth of contents.

[19] The Supreme Court of Canada adopted the principled approach in *R v Khan*, [1990] 2 SCR 531, in which hearsay evidence can be admitted where it is both reliable and necessary.[11] Reliability refers to the circumstantial indicia of trustworthiness arising from the context in which the evidence was created. Necessity refers to where the evidence is reasonably necessary to prove a fact in issue.[12]

[20] I find that the Printouts are admissible for the purpose of confirming Dr. Westrom's testimony, as represented by the appellant, as they contain sufficient badges of reliability to warrant admissibility and present the document in the necessary way. It is key that the documents originate from an official website of a well-known organization with a stake in presenting correct information to the world that is relied on. The respondent conceded that the documents bore the Canada logo albeit it lacked the internet address.

[21] In *ITV Technologies*, a distinction was made between the reliability of content from official and unofficial websites as follows:

> 16. With regard to the reliability of the Internet, I accept that in general, official web sites, which are developed and maintained by the organization itself, will provide more reliable information than unofficial web sites, which contain information about the organization but which are maintained by private persons or businesses.
>
> 17. In my opinion, official web sites of well-known organisations can provide reliable information that would be admissible as evidence, the same way the Court can rely on Carswell or C.C.C. for the publication of Court decisions without asking for a certified copy of what is published by the editor. For example, it is evident that the official web site of the Supreme Court of Canada will provide an accurate version of the decisions of the Court.
>
> 18. As for unofficial web sites, I accept Mr. Carroll's opinion that the reliability of the information obtained from an unofficial web site will depend on various factors which include careful assessment of its sources, independent corroboration, consideration as to whether it might have been modified from what was originally available and assessment of the objectivity of the person placing the information on-line. When these factors cannot be ascertained, little or no weight should be given to the information obtained from an unofficial web site.

[22] The Federal Court admitted printouts from online dictionaries and library searches to show that the letters "ITV" were capable of different meanings at different time periods, but did not admit the printouts for the truth of their contents. The Federal Court of Appeal affirmed the Federal Court's decision without taking a position on the admissibility of the internet evidence.

[23] The Court in *Thorpe* endorsed the court's approach in *ITV Technologies* in deciding that comments made by anonymous users of an unofficial public message board were not admissible. Other cases have followed the approaches to distinguish the reliability of content taken from unofficial versus official websites and generally assess the reliability of internet documents.[13]

[24] Printouts (of bond rates) from the Bank of Canada's official website were admitted for the truth of their contents in *Awan v Cumberland Health Authority*, 2009 NSSC 295, 283 NSR (2d) 107, as evidence to assist with calculating pre-judgment interest. In *Krawczyk v Canada (Minister of National Revenue – MNR)*, 2011 TCC 506, [2011] TCJ No. 414 (QL), Webb J. (as he then was) admitted a printout from the website for Human Resources and Skills Development Canada, which indicated wages for different jobs during a specific period.

[25] The respondent argued that it would not be necessary for the appellant to call a Canada official to testify that the website was produced or uploaded by that individual but it would be necessary to call a witness from Citizenship and Immigration Canada because the appellant seeks to identify the Printouts and discuss the programs, which necessarily means that the appellant seeks to introduce the Printouts for the truth of their contents rather than merely to verify Dr. Westrom's testimony.[14]

[26] Dr. Westrom's testimony confirmed that the Printouts capture the participation in the programs. In this case, I find that there are sufficient badges of reliability (the Canada logo, purportedly originates from an official site containing information that Canada represents to the world in a systematic and controlled fashion) present to warrant a conclusion that the Printouts were uploaded by Canada.

[27] In *Thorpe*, the court provided the following additional guidance on the circumstances that may inform a decision on reliability:

> 21. The internet is an abundant source of information. Some of the information available is impeccably accurate, while other information is pure garbage. It does not make sense, on the one hand, to conclude that any and all information pulled from the world-wide web is inherently unreliable and ought to be given zero weight; on the other hand, it makes equally little sense to open the door to admitting into court absolutely anything placed on the internet by anybody.
>
> 22. The approach taken by the Federal Court Trial Division has logical appeal. Even though the appellate court declined to endorse the analysis and conclusion, I agree with the essence of the ruling: internet information may be admissible in court proceedings depending upon a variety of circumstances relating to reliability which include, but are not limited to:
>
> * whether the information comes from an official website from a well known organization;

> * whether the information is capable of being verified;
>
> * whether the source is disclosed so that the objectivity of the person or organization posting the material can be assessed.
>
> …
>
> 24. If the internet-based evidence tendered does not contain sufficient badges of reliability, it ought be rejected as worthless and, hence, inadmissible.

[28] The Printouts were available to the respondent during the discovery process and capable of verification. Admittedly it is unclear when the websites were cached, however, Dr. Westrom's confirmation that the Printouts were properly printed and absent substantive concerns from the respondent, this suffices and alleviates the concern. I find that the Printouts are reliable and also meet the requirement of necessity as it is an expedient way of presenting the information. I conclude, on balance, that the Printouts contain sufficient badges of reliability that the websites represent reliable evidence for admissibility of the Printouts for the purpose of confirming Dr. Westrom's testimony.

[29] Dr. Westrom stated that the appellant is recognized by Citizenship and Immigration Canada under the Off-Campus Work Permit Program, Post-Graduation Work Permit Program and participates in these programs. For example, the Off-Campus program is available to international students who are expected to be enrolled at a post-secondary institution or qualifying program that leads to a degree at an eligible privately-funded institution. It is also recognized by the Department of Foreign Affairs and International Trade for the purpose of "Imagine Education au/in Canada" brand.

[30] The parties agreed on a Partial Agreed Statement of Facts as follows:

> The parties agree that:
>
> <u>The appellant</u>
>
> 1. The appellant is a private, for-profit corporation.
>
> 2. The appellant does not receive government funding.
>
> 3. During the period in issue, the appellant operated from two locations: its main campus at 300-4680 Kingsway, Burnaby, BC; and a satellite campus at 602 West Hastings, Vancouver, BC.

The fees

4. During the period in issue, the appellant collected:

   a) tuition fees in the amount of $1,244,029.52 ("Tuition Fees");

   b) student association fees in the amount of $7,710.10 ("Association Fees"); and

   c) application fees in the amount of $44,900 ("Application Fees", collectively, the "Fees").

5. The appellant did not charge or collect GST/HST on the Fees.

The assessment

6. During the period in issue, the appellant:

   a) was a GST/HST registrant;

   b) filed GST/HST returns on a quarterly basis; and

   c) was required to charge and collect GST/HST at the standard rate of 12% on taxable supplies.

7. On October 28, 2010, the appellant filed a GST/HST return for the period in issue and reported:

   a) sales and other revenue of $1,381,032.20,

   b) GST/HST collectible of $7,935.29,

   c) input tax credits of $68,847.27, and

   d) a refund of net tax in the amount of $60,911.98.

8. For the period in issue, the appellant did not collect and did not report GST/HST collectible on the Fees.

9. By notice of reassessment dated July 4, 2011 (the "Reassessment"), the Minister of National Revenue assessed the appellant for a net GST/HST adjustment for the period on the basis that the appellant was not a "university" as defined in subsection 123(1) of the Excise Tax Act.

10. By the Reassessment, the Minister of National Revenue:

    a) increased GST/HST collectible by $138,935.31; and

    b) disallowed $652.85 of the $68,847.27 of claimed input tax credits.

11. By way of notice dated September 3, 2011, and received by the Minister of National Revenue on September 8, 2011, the appellant objected to the Reassessment.

12. The Minister of National Revenue confirmed the Reassessment by notice dated July 5, 2012 on the basis that the appellant did not qualify as a "university" as defined in subsection 123(1) of the Excise Tax Act.

Input tax credits

13. Of the $68,847.27 input tax credits ("ITCs") claimed by the appellant for the period in issue, $50,217.14 were in respect of renovations made to its campus on West Hastings Street in Vancouver ("Renovations").

14. Of those ITCs of $50,217.14, the Minister denied ITCs of $652.85, such that $49,564.29 of the total ITCs allowed by the Reassessment (being $68,194.42) relate to the Renovations.

15. The Renovations were made to property used by the appellant in the course of supplying its educational services.

16. The parties agree that:

    a) if the appellant is not a "university" as defined in subsection 123(1) of the Excise Tax Act, the ITCs allowed by the Reassessment are properly allowable (for greater certainty, this results in allowable ITCs for the period of $68,847.27); and

    b) if the appellant is a "university" as defined in subsection 123(1) of the Excise Tax Act, the $49,564 of ITCs allowed in respect of the Renovations should be disallowed (for greater certainty, this reduces allowance ITCs for the period to $18,630.42).

II. Legislation

A. *Excise Tax Act*

[31] Subsection 123(1) of the *ETA* defines the term "university" as follows:

> 123.(1) Definitions – In section 121, this Part and Schedule V to X,
>
> "university" means a recognized degree-granting institution or an organization that operates a college affiliated with, or a research body of, such an institution;

[32] The preamble to subsection 123(1) refers to Schedule V (Exempt Supplies). Part III of Schedule V pertains to Educational Services.[15] Under section 7 of Part III, supplies are exempt if made by a school authority, a public college or a university. Sections 7 and 7.1 of Part III of Schedule V read as follows:

> 7.[Degree-granting programs] – A supply made by a school authority, public college or university of a service of instructing individuals in, or administering examinations in respect of, courses for which credit may be obtained toward a diploma or degree.
>
> 7.1 A supply of a service or membership the consideration for which is required to be paid by the recipient of a supply included in section 7 because the recipient receives the supply included in section 7.
>
> …

B. *University Act* (British Columbia)

[33] The *UA* governs the four universities and special purpose, teaching universities ("special purpose universities") in that province. Section 1 and subsections 3(1) and (1.1) reads:

> 1. In this Act:
>
> "**university**" means
>
> (a) each of the universities named in section 3(1), and
>
> (b) a special purpose, teaching university;

> "**special purpose, teaching university**" means a university referred to in section 3(1.1) and designated by the Lieutenant Governor in Council under section 71(3)(a).
>
> …
>
> 3.(1) The following corporations continue to be universities in British Columbia:
>
> (a) The University of British Columbia;
>
> (b) University of Victoria;
>
> (c) Simon Fraser University;
>
> (d) University of Northern British Columbia.
>
> 3.(1.1) An institution that is designated as a special purpose, teaching university by the Lieutenant Governor in Council under section 71(3)(a) is continued as a university in British Columbia.

[34] Subsection 67(1) prohibits the use of the term "university" by a person not authorized under the *UA* to use that term. That and subsections (2), (3) and (10) of the *UA* read:

> 67(1) A person in British Columbia other than a university must not use or be known by the name of a university.
>
> (2) A person must not in British Columbia hold itself out or be known as a university, or grant degrees in its own name except in accordance with powers granted under this Act.
>
> (3) An institution under the *College and Institute Act* may grant the degrees it is entitled to grant under that Act.
>
> …
>
> (10) Despite subsection (2), a person to whom consent under the *Degree Authorization Act* is given to grant or confer a degree may grant the degree in its own name in accordance with the consent.

C. *Degree Authorization Act* (British Columbia)

[35] The *DAA* regulates the ability to grant degrees by certain entities and defines "degree" in section 1. Subsection 2(1) provides that the *DAA* does not apply to the four universities and the special purpose universities.

[36] Section 1 defines "degree" and subsection 2(1) specifies that the *DAA* does not apply to the four universities, nor the special purpose universities. These provisions and subsections 3(2), 4(1) and (2) plus paragraphs 3(1)(a), (b) and (c) read as follows:

> 1 In this Act:
>
> …
>
> "degree" means recognition or implied recognition of academic achievement that
>
> (a) is specified in writing to be an associate, baccalaureate, masters, doctoral or similar degree, and
>
> (b) is not a degree in theology;
>
> …
>
> 2(1) This Act does not apply in relation to
>
> …
>
> (e) Simon Fraser University,
>
> …
>
> (g) the University of British Columbia,
>
> (h) the University of Northern British Columbia,
>
> (i) the University of Victoria, or
>
> (j) a special purpose, teaching university as defined in the *University Act*.
>
> …
>
> 3(1) A person must not directly or indirectly do the following things unless the person is authorized to do so by the minister under section 4:

> (a) grant or confer a degree:
>
> (b) provide a program leading to a degree to be conferred by a person inside or outside British Columbia;
>
> (c) advertise a program offered in British Columbia leading to a degree to be conferred by a person inside or outside British Columbia;
>
> …
>
> (2) A person must not directly or indirectly make use of the word "university" or any derivation or abbreviation of the word "university" to indicate that an educational program is available, from or through the person, unless the person is authorized to do so by the minister under section 4 or by an Act.
>
> …
>
> 4(1) The minister may give an applicant consent to do things described in section 3(1) or (2) if the minister is satisfied that the applicant has undergone a quality assessment process and been found to meet the criteria established under subsection (2) of this section.
>
> (2) The minister must establish and publish the criteria that will apply for the purposes of giving or refusing consent, or attaching terms and conditions to consent, under this section.
>
> …

III. Analysis

[37] The approach to statutory interpretation was formulated by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54, [2005] 2 SCR 601[*Canada Trustco*] as follows:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose

> on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.
>
> (Emphasis added)

[38] The term "university" is defined in subsection 123(1) of the *ETA* to mean a recognized degree-granting institution or organization that operates a college affiliated with, or a research body of, such an institution.

[39] The appellant argued that the term "university" should be read in the ordinary way and interpreted broadly to exempt from GST, institutions granting degrees, affiliated institutions and research bodies as it uses "means" language. According to the appellant, the text points to specific criteria that qualifies an institution as such. That is, if it is recognized as a "degree-granting institution", it is a "university" within the meaning of subsection 123(1) of the *ETA*.

[40] The appellant argued that whilst it is irrelevant to this appeal that it is not designated as a "university" under the *UA*, it is relevant that it was authorized to grant an Associate Degree (defined as a "degree") under the *DAA*, which means under provincial law it is "recognized" as a degree-granting institution, therefore a "university" under the *ETA* for GST purposes.

[41] It referred to the ordinary meaning of the term "recognize" in the *Canadian Oxford Dictionary*, 2d ed, *sub verbo* "recognize". The word "recognize" is defined as:

> **recognize … 1** identify (a person or thing) as already known; known again. **2** discover the nature of, esp. by some distinctive feature (*you can recognize a cardinal by its red colour; I can always recognize a phony*). **3** (foll. by *that*) realize or admit. **4** acknowledge the existence, validity, character, or claims of. **5** show appreciation of; reward. **6** (foll. by *as*, *for*) treat or acknowledge. **7** (of a chairperson etc.) allow (a person) to speak in a debate, etc. **8** grant diplomatic recognition to (a country). …

[42] In Black's Law Dictionary, 10th ed, *sub verbo* "recognition", the word "recognition" is defined as:

> **recognition,** *n.* (16c) **1.** Confirmation that an act done by another person was authorized. …

[43] Furthermore, its degree-granting status is also recognized by post-secondary institutions within the BC Transfer System and beyond British Columbia for the

transfer of credits from the appellant to other institutions and by federal government programs.[16]

[44] The Canada Revenue Agency's importation, from its GST/HST Policy Statement P-220 Domestic Entities That Qualify as a "university" in the *ETA* ("CRA Policy"), that a degree-granting institution is one that grants degrees at least at the baccalaureate or higher level to qualify as a university for the purposes of the definition in subsection 123(1) departs from the ordinary meaning of the definition.[17]

[45] Accordingly, the Fees paid for courses of study resulting in the granting of an Associate Degree, are exempt as a university from GST/HST under section 7 of the *ETA* because it is a recognized degree-granting institution, therefore a "university", within the meaning of subsection 123(1).

[46] In response, the respondent submitted that the appellant is a private, for-profit college, not an institution. It does not meet the requirements of the definition of "university" because the definition is exhaustive, displacing the plain and ordinary meaning found in dictionaries and degree, under the definition, equates to a baccalaureate or higher level degree consistent with the jurisprudence and reflected in the CRA Policy.

[47] According to the respondent, in order for the appellant to qualify as a university, as defined, a college (which it is) must be an organization that operates a college (which it does) affiliated with such institution. The point the respondent makes is that the degree-granting institution must be something other than a college. The consequence of accepting the appellant's construction of the definition is that it leads to illogical and absurd consequences plus renders parts of the legislation redundant. That is, the distinction made by Parliament between an institution and college within the text of subsection 123(1) is not only affected, but in a broader legislative context.

[48] The debate between the parties centres on the distinctions drawn in the legislation and the emphasis that each had placed on various components within the definition of "university" in the *ETA*. From a textual analysis, it is clear that regard must be had to the context and purpose of the provision. As noted in *Canada Trustco*, where the words of a statute are imprecise or support more than one reasonable meaning, the ordinary meaning of the words play a lesser role and regard must be had to the context and purpose of the statute so as to read the provisions of an act as a harmonious whole.

[49] The appellant urged the Court to accept that the right answer is that Parliament defined "university" in subsection 123(1) of the *ETA* to mean a recognized degree-granting institution and the appellant meets the requirements of the definition for GST purposes. It also said that the term "university" is not co-extensive with the regulation of granting of degrees, such that the definition of "university" chosen by Parliament under the *ETA*:

a) does not adopt the provincial criteria, the *UA*, for the use of the term "university" because the *ETA* is more expansive as it includes affiliated colleges and research bodies; and

b) adopts the provincial criteria, the *DAA*, for the granting of degrees.

[50] The appellant says that the *DAA* prevails as education is a matter of provincial competence and because it defines the Associate Degree as a "degree", the appellant is recognized as a degree-granting institution under provincial legislation and recognized in the educational community, within and outside the province of British Columbia, as well as by federal government programs. As a recognized degree-granting institution, it qualifies, as a "university", to be exempted from GST/HST under section 7.

[51] While I accept that the definition of "university" under the *UA* is narrower than the definition under the *ETA*, I do not accept the appellant's suggestion that Parliament has chosen to adopt one provincial statute (*DAA*) and not the other (*UA*). Nor do I accept the appellant's approach in construing the legislation as detailed below.

[52] Clearly, the definition of "university" under the *ETA* is more expansive as it also includes "a college affiliated with" "such an institution" or "a research body of" "such an institution". Breaking down the components of the definition, Parliament intended:

a) a recognized degree-granting institution, or

b) an organization that operates a college affiliated with such an institution, or

c) a research body of such an institution.

(emphasis added)

[53] This highlights the distinction that Parliament has drawn between three distinct entities that could qualify under the umbrella of "university" under subsection 123(1) for the requirements of the definition to be satisfied. It is clear that a college, here the appellant, is different than an institution in this context. Thus, under b), a college needs to be "affiliated" with "such an institution" (that is degree granting) in order to qualify as a university so there must be a nexus as between a college and "such an institution". Under a), there only need be a degree-granting institution. The respondent demonstrated the point that if the definition of university, that is under a), was interpreted as including a college, the definition would read as follows: a university would include a college or an organization that operates a college affiliated. That is illogical and not what Parliament intended; I will return to this later.

[54] Looking at the wider context, the definition of "university", as defined in subsection 123(1) of the *ETA*, is relevant to several other provisions in the *ETA* that exempt educational services from GST/HST. The exemptions, which the appellant is claiming as a university, are found in sections 7 and 7.1 of Part III of Schedule V relating to a supply by a university of educational instruction and examination in a course for which credit can be obtained toward a degree and supplies of ancillary services and memberships, respectively, provided by a university because it is providing exempt educational services which are exempt supplies.

[55] To qualify under section 7, Parliament drew other distinctions enabling a public college or a school authority, as defined in subsection 123(1), to claim exemptions similar to a university.[18] These illustrations serve to highlight the importance of the distinctions contemplated by Parliament within the statutory regime.

[56] The Federal Court of Appeal in *Klassen v The Queen*, 2007 FCA 339, 2007 DTC 5612(FCA) [*Klassen*] involved the consideration of sections 118.5 and 118.6 of the *Income Tax Act* and the eligibility of a student to claim education and tuition credits while attending a "university outside of Canada". In looking at the first two components of the term "university, college, or educational institution", it determined that when Parliament makes such distinctions, the court was to give effect to such distinctions and stated:

> 19. … It seems clear that Parliament, in extending the benefit of the credits in those two instances, drew a distinction between a "university" on the one hand, and the other education institutions referred to in that phrase, on the other.

[57] Dr. Westrom confirmed it is a private, for profit, college and had not received government funding; it is clearly not a public college referred to in section 7. Dr. Westrom also agreed it was not a vocational institute and was not taking the position that it is a college affiliated with a university.[19]

[58] With that context, I turn to whether the appellant constitutes a university under subsection 123(1). I find that the appellant is a college, not an institution in this context. One difficulty with the appellant's position is that it disregards and/or conflates distinctions in the *ETA* statutory regime. Generally, the thrust of its position is that albeit it is a privately-funded college, it claims to be a university even though it cannot refer to itself as a university under either the *UA* or the *DAA*, and if it is determined that it is a university under the *ETA*, it will be eligible to receive the same treatment as defined entities, such as a public college on the strength of its (associate) degree-granting ability under the *DAA*.

[59] Another difficulty is that it has placed undue emphasis on the "degree-granting" aspect as opposed to the "institution" component; the latter features prominently in the definition. It did so by using the term "recognized" in conjunction with the term "degree". Reverting back to the breakdown at paragraph 53 of these reasons, "institution" applies in a), as a standalone. However, in b) and c), "such an institution" works in tandem with either a "a college affiliated" or a "research body" in order to qualify as a university.

[60] The interpretation that the emphasis is more appropriately placed on institution is consistent with the French version of the phrase "a recognized degree-granting institution" which states as follows:

> « université » Institution reconnue qui décerne des diplômes
>
> Translated, the French version means "a recognized institution which grants degrees".

[61] Using the term recognized to place emphasis on the institution rather than the degree, is borne out by the French text which makes it clear that it is the institution which must be recognized rather than the degree.

[62] I note that there was some evidence that some universities, some only provisionally, and some colleges recognized the appellant within and outside of British Columbia. The Printouts relating to the federal programs include the appellant's name on lists and provide generic descriptors of the programs and the appellant's ability to grant a degree all of which were produced as confirmation of

Dr. Westrom's testimony as to its participation in those programs and acceptance by the federal government. However, the MAE consented to the granting of degrees for only specified periods of time and, according to Dr. Westrom's testimony, the appellant was subject to ongoing monitoring unlike the universities under the *UA* who were left to self-monitor. I am not satisfied that this is adequate as recognition as an institution as contemplated in the legislation.

[63] The appellant's interpretation is that Parliament chose not to adopt the provincial criteria (the specific universities referred to under the *UA*) is a misconstruction of the legislation. I disagree. In my view, the specific universities under the *UA* would be embodied in a) of the breakdown, at paragraph 53 of these reasons, as the degree-granting institutions contemplated in subsection 123(1). As well, the *ETA* definition would capture the remainder of the definition in the *ETA* to encompass "a college affiliated" or a "research body" aligned with "such an institution" fulfilling Parliament's intent in formulating the exhaustive definition.

[64] Turning to the granting of degrees, the term "degree" is not defined in the *UA* but is defined under the *DAA* which governs the authorization by certain entities to grant degrees provided ministerial consent has been obtained from the MAE. However, subsection 2(1) of the *DAA* provides that this legislation does not apply to the four universities nor the special purpose universities under the *UA*. I further note that under section 2 of the *UA*, "Each university has in its own right the name and the power to grant degrees established in accordance with this Act." I had understood the appellant to suggest that the *DAA* governed the various educational entities, including the specified universities under the *UA*, however, clearly the *DAA* and *UA* derive the power to grant degrees under separate legislation evidencing a distinction drawn under provincial legislation. While an entity may be authorized to grant an Associate Degree, defined as "degree" under section 1 of the *DAA*, such entity is not authorized to call itself a "university" under the *DAA* nor the *UA*.

[65] An Associate Degree was the highest degree that the appellant could grant which could be used for laddering towards a baccalaureate degree. Dr. Westrom admitted in cross-examination that an Associate Degree is not equivalent to a baccalaureate degree and that 60 credits are needed for the former and 120 credits for the latter. If a student wishes to pursue a baccalaureate, then he or she would need to attend a university such as Simon Fraser University, as the appellant cannot grant a baccalaureate degree.

[66] In my opinion, the term "degree" in subsection 123(1) of the *ETA* does not encompass an Associate Degree.[20] The Federal Court of Appeal in *Klassen* stated:

> 20. … In giving effect to the distinction drawn by Parliament, the most salient feature which distinguishes a "university" is the type of degree which a university grants and in particular the baccalaureate degree, which is the threshold requirement imposed by universities for the pursuit of graduate studies. I can think of no other reliable or objectively ascertainable criteria on which the distinction drawn by Parliament could rest.
>
> 21. I therefore conclude that the expression "university outside Canada" refers to an educational institution which confers degrees usually granted by universities, that is a doctorate degree, a master degree or at minimum degrees at the baccalaureate level or its equivalent. The degree granted by MSU-Bottineau in this case (i.e. the "associate degree") attests to the successful completion of a two year undergraduate program. As this is the highest degree which MSU-Bottineau can confer, it does not qualify as a "university outside Canada". …

[67] Associate Chief Justice Rossiter, as he then was, similarly held in *Zailo v Her Majesty the Queen*, 2014 TCC 60, 2014 DTC 1087, that "degree" as used in paragraph 118.5(1)(*b*) of the *Income Tax Act* does not include an associate degree. Rossiter A.C.J. stated as follows:

> 8. … Parliament obviously distinguished between universities and colleges or other post-secondary educational institutions. The distinguishing factor is that universities offer bachelor's degrees and higher while the others do not. If associate's degrees are accepted in the definition of "degree", then universities and other post-secondary institutions are no longer distinguishable and the legislative scheme becomes incoherent.
>
> 9. The Federal Court of Appeal's decision in *Klassen* strongly suggests that an associate's degree is not eligible for a tuition credit. I find this to be a reasonable conclusion in law, especially in light of the incoherent nature that the legislation would become if associate's degrees were accepted in the definition of "degree", in light of subparagraphs … of the *ITA*.
>
> (Emphasis added)

[68] Accordingly, I find that an Associate Degree is insuffice and that a "degree" for the purposes of subsection 123(1) of the *ETA* must equate to a baccalaureate degree or higher.

[69] The appellant argued that it is not relevant to this appeal that it is not a "university" and referenced the prohibition, in section 67 of the *UA*, precluding it

from referring to itself as a university unless authorized. There is a similar prohibition in the *DAA*. Dr. Westrom admitted that the appellant is not - and has never been - authorized to refer to itself as a university and the read-ins from discovery show it would never obtain such authorization from the Board. It seems to me that the fact that the appellant has not sought, nor received, nor will ever receive a designation as a university under subsection 3(1) or as a special purpose, teaching university under subsection 3(1.1) and paragraph 71(3)(a) of the *UA* nor has received consent to call itself a "university" under section 4 of the *DAA* is a factor that undermines the appellant's position that it is recognized as an institution by the provincial government.

[70] Even if I were to accept the literal interpretation advanced by the appellant, I agree with the respondent that construing the legislation in this manner results in absurdities leading to illogical consequences rendering the phrase "organization that operates a college affiliated with" a university redundant if a degree-granting institution is interpreted as a "college" in subsection 123(1). Also, incorporating and construing the word "college" in the definition of "university" makes the definition of "public college" redundant in section 7.

[71] In *Rizzo & Rizzo Shoes Ltd. Re,* [1998] 1 SCR 27 (SCC) at para. 27, Iacobucci J. stated that:

> 27. … It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, supra, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, Construction of Statutes, supra, at p. 88).[21]

[72] The following example provided by the respondent illustrates the conundrum. That is, a private college would be a university but a public college would not be, or a public college could also argue that it is also a university. If a public college were to successfully bring itself within the definition of "university", it would then be entitled to a public service body rebate as a university at a university rebate rate. Other examples were provided in written submissions.[22]

[73] Parliament's intention is that in order for a college to fall within the definition of "university", it must be "an organization that operates a college affiliated with a university". To interpret "a degree-granting institution" as a "college" makes the phrase "organization that operates a college affiliated with …" redundant. A redundancy would also occur in section 7, which makes a distinction between a "university" and a "public college". As noted by the respondent, this illustrates it is contrary to the presumption against tautology.

[74] Parliament's legislated definition of "university" in subsection 123(1) of the *ETA* makes a distinction between an institution and a college. I find that the appellant in this context is a college, not an institution.

[75] The answer to the question is: the appellant is not a recognized degree-granting institution, therefore it is not a university, under subsection 123(1) nor is it a "university" under the laws of the Province of British Columbia and it is not entitled to the exemption under section 7, of Part III, Schedule V of the *ETA*.

[76] Based on the foregoing reasons, I find and conclude that appellant does not qualify as a "university". Since I have concluded that the appellant is not a "university" as defined in subsection 123(1) of the *ETA* during the reporting period of July 1, 2010 to September 30, 2010, the input tax credits allowed by the reassessment are properly allowable in the amount of $68,847.27 for the relevant period.

[77] The appeal is dismissed.

[78] The parties are to make written submissions as to costs within 30 days of these Reasons.

Signed at Ottawa, Canada, this 2nd day of October 2015.

"K. Lyons"

Lyons J.

[1] The Fees comprise of application, tuition and student association fees.

[2] Paragraph 16 of the Partial Agreed Statement of Facts sets out the parties' agreement resolving the remaining issue (quantum of input tax credits) as dictated by the outcome.

[3] Exhibit A-2, Tabs 4, 5 and 6.

[4] The appellant formed a standards committee, comprised of experts, to ensure quality standards are met; it met three times annually. In its supervisory role, the government conducts an annual one-day review and assessment involving the participation of the appellant's standing committee members, consultants, students, administrative personnel and Dr. Westrom.

[5] Examples include where to get instructors on staff to supervise teaching, technology and instructional methods.

[6] Exhibit A-2, Tab 4.

[7] Exhibit A-2, Tab 8.

[8] It was initially authorized for four years and subsequently renewed for five years. Exhibit A-2, Tabs 6, 8, 14 and 15.

[9] Exhibit A-2, Tab 13.

[10] Exhibit A-2, Tabs 26, 27, 29 and 30.

[11] In *R v Wilcox*, 2001 NSCA 45, 192 NSR (2d) 159, the Court of Appeal for Nova Scotia held that the principled approach may be used to admit documentary evidence for the truth of its contents.

[12] The Supreme Court of Canada's comments in *R v B (KG)*, [1993] 1 SCR 740 at 796-97, [1993] SCJ No. 22 (QL), on necessity are particularly instructive:

> 106. However, it is important to remember that the necessity criterion "must be given a flexible definition, capable of encompassing diverse situations" (Smith, at pp. 933-34). Wigmore, vol. 5 (Chadbourn rev. 1974), s. 1421, at p. 253, referred to two classes of necessity:
>
> > (1) The person whose assertion is offered may now be dead, or out of the jurisdiction, or insane, or otherwise unavailable for the purpose of testing. This is the commoner and more palpable reason....

> (2) The assertion may be such that we cannot expect, again, or at this time, to get evidence of the same value from the same or other sources .... The necessity is not so great; perhaps hardly a necessity, only an expediency or convenience, can be predicated. But the principle is the same.
>
> (Emphasis in original)

13 In *Williams v Canon Canada Inc*., 2011 ONSC 6571, the Ontario Superior Court of Justice did not admit results of a Google search as they represented unverifiable and unreliable sources. In *Rosetim Investments Inc. v BCE Inc.*, 2011 SKQB 253, the Saskatchewan Court of Queen's Bench did not admit a financial report on RBC Capital Markets downloaded from a website called "Investex" for lack of reliability. At paragraph 27, the Court finds that some internet material was established to be reliable, therefore admissible, as the source of the information was disclosed. Other material was not admissible.

14 Transcript, page 13, lines 20 to 25.

15 The charging provision in section 165 imposes on the recipient of a taxable supply GST on the value of the consideration for the supply. Part IX requires a person who makes a taxable supply to collect or charge GST pursuant to subsection 222(1). The definition of taxable supply means a supply that is made in the course of a "commercial activity." An exempt supply is excised from the definition of commercial activity pursuant to subsection 123(1).

16 The four universities. Outside of British Columbia, those include, University of Toronto, McGill University, University of Saskatchewan and St. Mary's University. Federal programs include Citizenship and Immigration Canada for the purposes of the Off-Campus Work Permit Program and Post-Graduation Work Permit Program, and the Department of Foreign Affairs and International Trade and the Council of Ministers of Education, Canada for the purposes of the "Imagine Education au/in Canada" brand. The appellant also referred to other provincial jurisdictions that define degree which includes an Associate Degree: The *Degree Authorization Act* of Saskatchewan, The Statutes of Saskatchewan, 2012 (effective October 29, 2012), c. D-2.1 and *The Degree Granting Act* of New Brunswick, RSNB 2011, c. 140.

17 The CRA Policy is dated October 26, 1998 and refers to three categories of domestic entities that will qualify as a university.

18 "School authority" is defined as an organization that operates an elementary or secondary school providing educational instruction that meets the standards established by the applicable provincial government. "Public college" requires the body to be supported, in part, by government funding and is defined as a post-secondary college or post-secondary technical institute: (a) that receives from a government or a municipality funds that are paid for the purpose of assisting the organization in the ongoing provision of educational services to the general public; and (b) the primary purpose of which is to provide

programs of instruction in one or more fields of vocational, technical or general education. See also other applicable legislation per Appendix 1.

19 At the hearing, the appellant relied on *Fraser International College Ltd. v Canada*, 2010 TCC 63, 2010 CarswellNat 237 [*FIC*] involving section 7 and whether a supply was made. However, the Court was focused on whether *FIC* is an organization that operates a college "affiliated" with Simon Fraser University, a recognized degree-granting institution, so as to qualify as a "university" within the meaning of subsection 123(1) of the Act. The appellant asserted that "affiliated" should be given its ordinary meaning so that its relationship with Simon Fraser University falls within that meaning. The respondent contended it has a specific meaning in referring to the college requiring a relationship between a college and a university whereby the university agrees to grant degrees to the students of the college upon completion of their course of study. Since FIC does not grant degrees to students that graduate from FIC, FIC is not a college affiliated with Simon Fraser University nor on the facts was FIC affiliated with Simon Fraser University. Therefore, the decision does not assist the appellant as it capitulated that it is not taking the stance it was a college affiliated.

20 The TCC determined that the Minot State University-Bottineau, which granted associate degrees, was not a university because it did not grant a baccalaureate level degree thus the appellant was not entitled to the credit.

21 See also *Humber College Institute of Technology & Advanced Learning v Canada*, 2013 TCC 146, [2013] GSTC 63.

22 Examples include:

> The definition of university was interpreted as including a private college for the purposes of section 7 of Part III, Schedule V of the *ETA*, it also results in a private college being a university for the purposes of the Act as a whole. Accordingly, a private college would be exempt in respect of its supplies but would not be entitled to claim input tax credits or the public service body rebate. This result seems contrary to the scheme of the *ETA* which is structured so that an entity making taxable supplies is entitled to claim input tax credits and an entity making exempt supplies such as a university is entitled to a rebate.
>
> The appellant is claiming its supplies are exempt but it also claimed input tax credits in respect of the Renovation which is precluded under the *ETA*. If the appellant was to fall within the definition of "university" it would not be entitled to either input tax credits, or the public service body rebate thereby creating a result that is contrary to the scheme of the *ETA*.

CITATION:	2015 TCC 238
COURT FILE NO.:	2012-3854(GST)G
STYLE OF CAUSE:	ALEXANDER COLLEGE CORP. and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	February 19, 2015
REASONS FOR JUDGMENT BY:	The Honourable Justice K. Lyons
DATE OF JUDGMENT:	October 2, 2015

APPEARANCES:

Counsel for the Appellant:	Natasha Reid and Terry Barnett
Counsel for the Respondent:	Jasmine Sidhu and Whitney Dunn

COUNSEL OF RECORD:

For the Appellant:

Name:	Natasha Reid and Terry Barnett
Firm:	Thorsteinssons LLP Vancouver, British Columbia

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada