

Docket: 2008-879(GST)G

BETWEEN:

FRASER INTERNATIONAL COLLEGE LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on July 7, 2009, at Vancouver, British Columbia

By: The Honourable Justice Brent Paris

Appearances:

Counsel for the Appellant: Terry G. Barnett and  
Kimberley L. Cook

Counsel for the Respondent: Bruce Senkpiel

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**JUDGMENT**

The appeal from the assessment made under the *Excise Tax Act*, for the period March 31, 2006 to December 31, 2006, is allowed, with costs, and the assessment is vacated, on the basis that the Appellant is a university and the courses it offered were exempt supplies.

Signed at Ottawa, Canada, this 3rd day of February, 2010.

“Brent Paris”

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Paris J.

Citation: 2010 TCC 63  
Date: 20100203  
Docket: 2008-879(GST)G

BETWEEN:

FRASER INTERNATIONAL COLLEGE LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Paris J.**

[1] The Appellant operates Fraser International College (“FIC”), a private “for profit” college offering courses of study designed to prepare international students for admission to Simon Fraser University (“SFU”).

[2] The issue in this appeal is whether the courses offered by FIC are exempt from GST. Sections 7 and 16 of Part III to Schedule V of the *Excise Tax Act* (“ETA”) exempt a supply made by a *school authority, public college or university* of a service of instructing individuals in certain courses. Those provisions read as follows:

7. 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.

- 16 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 (other courses in sports, games, hobbies, or other recreational pursuits that are designed to be taken primarily for recreational purposes) that are part of a program that consists of two or more courses and that is subject to the review of, and is approved by, a council, board or a committee of the school authority, college or university established to review and approve the course offerings of the school authority, college or university.

[3] The dispute in this case is whether the Appellant is a “university.” That term is defined in subsection 123(1) of the *ETA* as follows:

123(1) 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;

[4] The parties disagree over the meaning to be given to the word “affiliated” in this definition, and whether the FIC was a college affiliated with SFU, which is a recognized degree-granting institution.

[5] The Appellant contends that “affiliated” should be given its ordinary meaning, and that the relationship between the Appellant and SFU falls within that meaning.

[6] The Respondent takes the position that “affiliated” has a particular meaning when referring to a college and requires 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 SFU does not grant degrees to students that graduate from FIC, the Respondent says FIC is not a college affiliated with SFU.

[7] The Respondent also says that even if the Court finds that the construction of “affiliated” proposed by the Appellant is correct, the Appellant was still not, on the facts, affiliated with SFU.

## Background

[8] The Appellant was incorporated in January 2006 by IBT Education Ltd., an Australian company that operates a number of private colleges in Canada, Australia, Singapore and the United Kingdom. Those colleges are all partnered with particular universities and offer university transfer programs designed for international students. Successful completion of the programs entitles students to enter the partner university, generally at the second year level.

[9] The Appellant and SFU entered into a “Recognition and Educational Services Agreement” (the “Agreement”) on March 29, 2006. The Agreement contemplated a cooperative arrangement between FIC and SFU pursuant to which FIC would develop and offer university transfer programs and SFU would provide services and facilities to assist FIC in the provision of those programs. In exchange, SFU would receive fees from FIC.

[10] According to the Agreement, SFU recognized FIC as being affiliated with SFU. Section 3 of the Agreement set out that:

The University acknowledges and agrees that, due to the nature and extent of the collaborative arrangements between the Parties, the College is recognised as being ‘affiliated with’ the University from the Commencement Date but so that such affiliation shall not incur any liabilities or obligations on the part of the University save as expressly set out in this Agreement.

The collaborative arrangements between SFU and FIC included the following:

- provision of instructional and office space to FIC on SFU’s campus
- SFU supervision of FIC curricula and course materials;
- approval of FIC instructors by SFU;
- guaranteed acceptance into SFU of FIC students meeting academic standards set by FIC students;
- use of SFU facilities and services by FIC students.
- creation of Academic Advisory Committee composed of SFU and FIC members to set academic policy and oversee quality of FIC courses; and

- collaboration between SFU and FIC to design curriculum for FIC based on SFU courses and materials in a range of SFU undergraduate courses;

[11] Under section 7(f) of the Agreement, SFU granted permission to FIC to promote itself as a college affiliated with SFU and to promote its courses as been in affiliation with SFU. Paragraph 5(k) required FIC to inform its students that they were students of a college affiliated with SFU.

[12] The Agreement was approved by both the SFU Senate and the Board of Governors in the Spring of 2006, and FIC began operating in September 2006.

[13] Ms. Beverly Hudson, FIC's director, testified that the university transfer courses offered by FIC had the same curriculum as equivalent courses at SFU and were developed in conjunction with and approved by SFU. FIC instructors met each semester with course coordinators from SFU to review marking criteria, final examinations and final grades, to ensure that the standards at FIC were equivalent to those at SFU for the same courses. FIC students who achieved a 2.5 grade point average in their courses were guaranteed entrance to SFU. She also said that the admission letter sent to FIC students was signed jointly by her on behalf of FIC and by the Director of Admissions for SFU.

[14] FIC's recruiting brochure, entitled "Your Pathway to Simon Fraser University", showed SFU's logo with the notation "in association with Simon Fraser University" on its cover. A welcoming message from the Vice-Chancellor of SFU appeared on the first page, followed by a similar message on page two from Ms. Hudson. SFU's involvement in the design and monitoring of FIC's courses was highlighted, and all of the courses were presented as steps towards eventual entry into a corresponding SFU faculty. The brochure also contained a page describing SFU and its campus, and the list of accommodation options for students included SFU student residences.

[15] Ms. Hudson stated that FIC student numbers were issued by SFU, and their student identification card gave access to SFU libraries, sports facilities and computer labs, and FIC students were entitled to join SFU clubs and societies.

[16] Ms. Kate Ross, the Registration and Senior Director of Enrolment at SFU testified that SFU entered into the agreement with FIC in order to increase its enrolment of foreign students, which was consistent with its goal of diversifying its student population. It also received financial benefits from the arrangement, both in terms of the fees paid to it by FIC and the higher tuition paid by foreign students to attend SFU. The evidence showed that 92% to 95% of FIC's graduates went on to study at SFU.

### Respondent's Arguments

[17] Counsel for the Respondent submitted that an "affiliated college" is one whose graduates are granted degrees by the university with which the college is affiliated. He said that this concept "has been around for a long time", was an "accepted definition in university circles" and was "part of the institutional structure of universities that has been imported into Canada from the United Kingdom".

[18] The Respondent's counsel cited two cases (*Re City of London and Ursuline Religion of the Diocese of London*)<sup>1</sup> and *Reference Re An Act to Amend the Education Act (Ontario)*<sup>2</sup> which mention the term "affiliated college". He also referred to the "Directory of Canadian Universities"<sup>3</sup> published by the Association of Universities and Colleges of Canada ("AUCC") which contained the following definition for "Federated, affiliated, constituent institution" in its glossary:

**Federated, affiliated, constituent institution:** a university or college may be associated with another university, often called a parent university as a federated, affiliated, or constituent institution. A *federated* institution is responsible for its own administration usually and has the power to grant degrees, but during the term of federation agreement it may suspend some or all of its degree-granting powers. An *affiliated* institution is responsible for its own administration but does not have power to grant degrees. In both cases the parent university oversees instruction in the programs covered by the federated or affiliated agreement, and grants degrees to the students who successfully complete those programs. A

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<sup>1</sup> (1964) 43 D.L.R. (2d) 220, Ont. (C.A.).

<sup>2</sup> (1987) 40 D.L.R. (4th) 18 (S.C.C.),

<sup>3</sup> (42<sup>nd</sup> ed, 2008),

*constituent* institution is an integral part of the parent university with respect to both administrative and academic matters.  
(emphasis added)

[19] Counsel referred to the administrative position of the Canada Revenue Agency set out in Policy P-220 entitled “*Domestic Entities that Qualify as a “University” in the Excise Tax Act*”, dated October 26, 1998. According to paragraph 2 of that document:

An organization is considered to operate an affiliated college of a university or degree-granting institution (the “parent”) only where there is a formal affiliation agreement between the parent and the affiliate wherein the parent agrees to grant degrees to graduates of the affiliated college in exchange for a certain degree of control over the academic standards and course offerings of the affiliated college  
...

[20] Since SFU did not grant degrees to graduates of FIC, the Respondent says FIC was not affiliated with SFU.

[21] In the alternative, the Respondent’s counsel contended that FIC and SFU were not affiliated within the ordinary meaning of that word. He pointed to certain written materials including FIC’s brochure to prospective students, which described FIC as “associated” or “partnered” with SFU rather than “affiliated”. He also relied on the fact that FIC was not listed in the AUCC Directory of Canadian Universities as an affiliated college of SFU. He also drew the Court’s attention to subsection 35(2) of the British Columbia *University Act*<sup>4</sup> which provides for the composition of the Senate for a university, and requires that the governing body of each affiliated college must elect a member. Since FIC had no seat on the SFU Senate, counsel said that this shows that it was not affiliated with SFU.

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<sup>4</sup> R.S.B.C. 1996, ch. 468.

## Analysis

[22] The principles to be applied in the interpretation of tax statutes are set out by the Supreme Court of Canada in *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*<sup>5</sup> at paragraphs 21 to 23:

21 In *Stubart Investments Ltd. v. The Queen*, this Court rejected the strict approach to the construction of taxation statutes and held that the modern approach applies to taxation statutes no less than it does to other statutes. That is, “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” (p. 578): see *65302 British Columbia Ltd. v. Canada*. However, because of the degree of precision and detail characteristic of many tax provisions, a greater emphasis has often been placed on textual interpretation where taxation statutes are concerned: *Canada Trustco Mortgage Co. v. Canada*. Taxpayers are entitled to rely on the clear meaning of taxation provisions in structuring their affairs. Where the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretive process.

22 On the other hand, where the words of a statute give rise to more than one reasonable interpretation, the ordinary meaning of words will play a lesser role, and greater recourse to the context and purpose of the Act may be necessary: *Canada Trustco*, at para. 10. Moreover, as McLachlin C.J. noted at para. 47, “[e]ven where the meaning of particular provisions may not appear to be ambiguous at first glance, statutory context and purpose may reveal or resolve latent ambiguities.” The Chief Justice went on to explain that in order to resolve explicit and latent ambiguities in taxation legislation, “the courts must undertake a unified textual, contextual and purposive approach to statutory interpretation”.

23 The interpretive approach is thus informed by the level of precision and clarity with which a taxing provision is drafted. Where such a provision admits of no ambiguity in its meaning or in its application to the facts, it must simply be applied. Reference to the purpose of the provision “cannot be used to create an unexpressed exception to clear language”: see P. W. Hogg, J. E. Magee and J. Li, *Principles of Canadian Income Tax Law* (5th ed. 2005), at p. 569; *Shell Canada Ltd. v. Canada*. Where, as in this case, the provision admits of more than one

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<sup>5</sup> [2006] 1 S.C.R. 715, 2006 SCC 20.



reasonable interpretation, greater emphasis must be placed on the context, scheme and purpose of the Act. Thus, legislative purpose may not be used to supplant clear statutory language, but to arrive at the most plausible interpretation of an ambiguous statutory provision.

[23] In this case, I have not been persuaded by the Respondent that there is any ambiguity in the meaning of “affiliated” as used in the definition of “university” in the *ETA*.

[24] The cases cited by the Respondent do not shed any light on the meaning of the term “affiliated” and do not support the proposition that it has a special meaning in “university circles.” The only place other than the CRA’s own policy statement in which one finds the definition of “affiliated” proposed by the Respondent is in the glossary in the AUCC “Directory of Canadian Universities”. However, in the absence of any evidence that Parliament considered the views of the AUCC when drafting the definition of “university” in the *ETA*, I am unable to accord the glossary definition any authority for the purpose of interpreting the term “affiliated.”

[25] Nor am I satisfied on the basis of the AUCC glossary entry alone that “affiliated college” is a specialized term in the field of post-secondary education that has an established and accepted legal meaning. Where a term used in a taxing statute has a well-defined legal meaning, it is reasonable to assume that Parliament was cognizant of the general law and intended to adopt that meaning (*Will-Kare Paving & Contracting Limited v The Queen*<sup>6</sup>).

[26] In this case, though, the Respondent has not shown that there is an accepted legal meaning of “affiliated college” either in federal or provincial law. The only statutory references to “affiliated college” that the Respondent provided were in the *University Act*, which does not define the term. Subsection 37(1) of that *Act* vests the governance of a university in the university’s Senate and, in paragraph 37(1)(v), gives the Senate the power to establish the terms of affiliation with other educational institutions including colleges. It reads:

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<sup>6</sup> 2000 SCC 36.

37(1) The academic governance of the university is vested in the senate and it has the following powers:

...

(u) to set the terms or affiliation with other universities, colleges or other institutions of learning and to modify or terminate the affiliation;

This suggests to me that the B.C. Legislature did not intend to limit the terms of an affiliation between a university with a college to those set out in the AUCC glossary definition referred to above, but rather has left them to each university Senate to decide.

[27] Canada Revenue Agency's administrative position set out in Policy P-220 cannot assist the Respondent in this case because it has not been shown that there is any ambiguity in the use of "affiliated" in the definition of "university". Administrative practice is only a useful guide in cases where there is more than one reasonable interpretation available. Where no ambiguity is present, administrative practice should be accorded little weight.

[28] Little can be gleaned from the statutory context here. The word "university" is used in a number of places in the *ETA* and the related *Regulations*, including Part III of Schedule V. Some examples<sup>7</sup> are:

- paragraph 19(3)(c) and subsection 21(3) of the *Streamlined Accounting (GST/(HST) Regulations* concerning the eligibility of a university to use the Streamlined Method of Accounting for GST;
- paragraph 259(1)(c) of the *ETA* which provides a rebate of GST on the purchase of printed materials by a university;
- subsection 191(6) of the *ETA* which provides an exception to the self-supply rule for a student residence where the builder is a university; and

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<sup>7</sup> Taken from *David Sherman's Analysis*, 123(1)"university".

- paragraph 149(1)(b) or (c) which excludes universities from the application of determining whether an organization is a financial institution.

[29] A “university” is also included in the definition of “public service body” in subsection 123(1) of the *ETA*, which is relevant in the determination of the small supplier threshold and the tax treatment of capital real property as well as the entitlement to use the Streamlined Method of Accounting. A “selected public service body” is entitled to a rebate of 67% of the GST it pays on supplies used to make exempt supplies, but the availability of this rebate to universities is restricted to those not operating for profit.

[30] While this list is not necessarily exhaustive, the sections of the *ETA* and *Regulations* in which the word “university” are found illustrate the “degree of precision and detail characteristic of many tax provisions” which leads in such cases to greater emphasis being placed on textual interpretation.<sup>8</sup>

[31] As far as I am able to tell, nothing in these provisions gives any insight into Parliament’s intention in choosing to include affiliated colleges in the definition of “university”, nor does any latent ambiguity in that definition arise from this statutory context.

[32] I agree with counsel for the Appellant that if Parliament had intended that an entity would only be affiliated with a university if the university granted a degree for the course of study at the affiliated entity, this restriction would have been drafted directly into the legislation.

[33] Since it has not been shown that there is any explicit or latent ambiguity in the use of the word “affiliated” in the definition of “university” in the *ETA*, it is appropriate to give it its ordinary meaning. The verb “affiliate” is defined in the *Canadian Oxford Dictionary*<sup>9</sup> as follows:

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<sup>8</sup> See *Placer Dome*, para. 21.

<sup>9</sup> (2<sup>nd</sup> ed.) 2004.

1. attach or connect (to a larger organization); adopt as a member branch, etc.
2. associate oneself with a society or organization.

The *Random House Dictionary of the English Language*<sup>10</sup> gives its meaning as:

1. to bring into close association or connection: *The research center is affiliated with the university.*
2. to attach or unite on terms of fellowship; associate

From these definitions, it appears that “affiliated” in its ordinary sense means “associated” or “closely connected with”.

[34] The evidence provided by the Appellant makes it abundantly clear that FIC was associated or closely connected with SFU. I would refer in this respect to collaborative arrangements between FIC and SFU set out in the Recognition and Educational Services Agreement. The uncontradicted testimony of Ms. Hudson was that those arrangements were in fact implemented by FIC and SFU and that FIC presented and conducted itself as being associated with SFU and as providing a direct pathway to entrance to SFU for international students. Furthermore, the language used by FIC in its written materials was descriptive of a close relationship or connection between FIC and SFU, and it is immaterial that it referred to itself as being associated or partnered with SFU rather than affiliated.

[35] I also do not accept the Respondent’s argument that, since FIC had no seat on the SFU Senate, it was not affiliated with SFU. I cannot see that the failure to comply with paragraph 35(2)(j) of the *Universities Act* changes in any way the nature of the relationship between SFU and FIC. It may be that FIC is entitled to elect a member to the SFU Senate, and that it could insist on it being permitted to do so. There was no evidence that SFU would refuse to allow it to do so.

[36] For these reasons, I find that the Appellant falls within the definition of “university” in the *ETA* and that as a result, the courses it offered were exempt supplies under either section 7 or 16 of Part III of Schedule V to the *ETA*.

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<sup>10</sup> (2<sup>nd</sup> ed.) 1987.

[37] The appeal is allowed, with costs to the Appellant, and the assessment is vacated.

Signed at Ottawa, Canada, this 3rd day of February, 2010.

“Brent Paris”

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Paris J.

CITATION: 2010 TCC 63

COURT FILE NO.: 2008-879(GST)G

STYLE OF CAUSE: FRASER INTERNATIONAL COLLEGE  
LIMITED and  
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: July 7, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Brent Paris

DATE OF JUDGMENT: February 3, 2010

APPEARANCES:

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