

Dockets: 2009-2667(EI)
2009-2668(CPP)

BETWEEN:

INGE ROECKER OP ASIR STUDIO,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

SENGSACK TSOI

Intervenor.

Appeals heard on common evidence on March 19, 2010
at Vancouver, British Columbia

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

Appearances:

Counsel for the Appellant: Michael W. Hunter, Q.C.

Counsel for the Respondent: Amandeep K. Sandhu

For the Intervenor: The Intervenor himself

JUDGMENT

In accordance with the attached Reasons for Judgment, both appeals are allowed and the decisions of the Minister of National Revenue – both dated July 28, 2008 – are hereby varied to find that:

- Sengsack Tsoi was not engaged in either insurable or pensionable employment with Inge Roecker Op. Asir Studio from January 1, 2007 to February 1, 2008.

Signed at Sidney, British Columbia this 4th day of May 2010.

“D. W. Rowe”

Rowe D.J.

Citation: 2010 TCC 230
Date: 20100504
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REASONS FOR JUDGMENT

Rowe, D.J.

[1] The Appellant - Inge Roecker - (“Roecker”) appealed from two decisions issued by the Minister of National Revenue (the “Minister”) on May 21, 2009 wherein the Minister decided Sengsack Tsoi was employed under a contract of service during the period from January 1, 2007 to February 1, 2008 and that said employment constituted both employable and pensionable employment pursuant to the relevant provisions of the *Employment Insurance Act* (“EIA”) and the *Canada Pension Plan* (the “Plan”), respectively. Counsel for the Appellant and counsel for the Respondent and the Intervenor - appearing on his own behalf - agreed both appeals could be heard together.

[2] Counsel for the Appellant - with the consent of counsel for the Respondent and also of the Intervenor, filed a Brief of Documents – tabs 1 to 21, inclusive – as

Exhibit A-1. Unless otherwise specified, reference hereafter to any document(s) at a particular tab will indicate their location within said exhibit.

[3] Inge Roecker testified she is an architect and has been a Professor in the School of Architecture at the University of British Columbia (“UBC”) since 2003. The academic term is from September to May and once a student attains a Master of Architecture (“MArch”) degree, he or she must spend 3 years working in the profession and then obtain a passing grade on an examination to be eligible for registration with the Architectural Institute of British Columbia (“AIBC”). Roecker stated that this period between graduation and registration with that professional association is often spent in research and she was pleased to create opportunities for some students. Roecker is not currently registered with AIBC but is registered with the governing professional body in Germany where – during the annual academic hiatus – she carries on an architectural practice under the name Asir architekten (“Architekten”) and designs buildings with the assistance of partners and consultants in an office located in Stuttgart. In Vancouver, Roecker also carried on a business – Asir Studio – as a sole proprietorship which provided architectural and interior design services, including research relating to design, and design consultation on urban planning, and drafting. In 2003, Sengsack Tsoi (“Tsoi”) – pronounced Choy – was a student at UBC in the 3-year Master program. He had a Bachelor of Landscape Architecture (“BLA”) which met the criteria of an undergraduate degree required as a condition of enrolment. During Tsoi’s course of study at UBC, he worked in Roecker’s office in Stuttgart. Roecker was referred to tab 1, a document titled: Invoice for Services – dated December 18, 2006 – which was submitted to UBC by Tsoi in the amount of \$3,000 relating to services rendered by him from November 15 to December 15, 2006 in relation to a project – Hampton Grant – which was funded by UBC for the creation of a three-dimensional (“3-D”) visualization tool as a system for recording, storing, analyzing and managing building information pertaining to the area known as Chinatown in Vancouver. This community-based website would allow users to submit interactive inquiries regarding the historical data and to display it in 3-D. Roecker stated she persuaded UBC to allocate the sum of \$28,000 to the Hampton Grant. A consultant with computer 3-D expertise was retained for the project and Tsoi was engaged to conduct certain research. Roecker stated UBC inquired whether Tsoi’s invoice – tab 1 - was appropriate and after receiving her approval, paid Tsoi. Roecker stated that her proprietorship – Asir Studio – did not have any connection with the Hampton Grant project. As a professor, Roecker had an office at UBC but Asir Studio did not have any office space except in Roecker’s residence and Tsoi worked from that workplace using his personal laptop as a primary tool. Another invoice – tab 2 – in the sum of \$3,000 – was submitted to UBC by Tsoi on February 7, 2007, for services rendered on the Hampton Grant project for

the period from January 7 to February 7, 2007 and was paid by UBC. On March 11, 2007 – Tsoi submitted an invoice – tab 3 – to UBC – in the sum of \$2,017.22 – composed of a flat rate charge of \$1,500 in respect of “deliverables” and for disbursements in the sum of \$517.22 for printing, film developing and scanning and book resources. A further invoice – tab 4 – dated June 11, 2007 – in the sum of \$2,000 – was sent by Tsoi to UBC for services rendered on the Hampton Grant project from May 1, 2007 to June 11, 2007. These invoices – tabs 3 and 4 – were paid by UBC. In each of the invoices submitted by Tsoi to UBC, the amount billed was inserted under the heading: Contract Type: Flat Rate. Roecker was referred to an invoice – tab 5 – dated April 30, 2007 – in the sum of \$3,000 – submitted by Tsoi to Asir Studio for “additional services” rendered on the Hampton Chinatown project during the period April 1 to April 31, (*sic*) 2007. Roecker stated the Hampton Grant funds had been exhausted at that point and knowing that UBC would not pay any further invoices, decided to pay Tsoi for his work during that period. She stated that although she could not receive reimbursement from UBC, that it was not unusual for a professor to use personal funds to continue with a research project as – usually – it was very difficult to obtain an extension of funding. Roecker was referred to an invoice – tab 6 – dated May 30, 2007 – submitted by Tsoi to Asir Studio seeking payment of a “Contract Amount” in the sum of \$1,500 for services rendered in relation to the preparation of an AIBC portfolio binder for architectural registration designed to enable foreign-trained architects to obtain AIBC registration. Roecker identified this work as personal since there is a requirement that a professor publish work within his or her discipline, and paid the amount requested. Roecker stated she also paid Tsoi the amount billed – \$3,000 – in an invoice dated June 30, 2007 – tab 7 – for services described therein as “Additions and modifications to the Asir studio website and Asir studio drawings and photos for publication”, performed between June 1 and June 30. Roecker stated the Asir Studio computer was a Macintosh so the work was performed by Tsoi on his laptop. The invoice – tab 8 – dated July 30, 2007 – was directed by Tsoi to Architekten at an address in Stuttgart and requested payment in the sum of 3,003 euro. The amount due was stated under the heading: Contract Type: Flat Rate and was comprised of the sum of 2,103 euro for services rendered from July 1 to July 30, 2007 in connection with a 3-D site models and perspectives on two projects, a factory and a parkade and 900 euro for expenses. Roecker stated the expenses probably related to Tsoi’s purchase of his Vancouver-to-Stuttgart airline ticket and pointed to the entry – identified by a check mark – in her bank statement – page 4 of tab 8 – indicating payment of 3,003 euro was made through her German business account on July 30, 2007. A further invoice – tab 9 – dated September 14, 2007 – was submitted by Tsoi to Asir Studio in Vancouver for the period from September 1 to September 15, 2007. The invoice requested payment in the sum of \$1,500 CAD pertaining to a Grant Writing Workshop and to Hotel

Beijing Preliminary Research. Roecker stated she paid Tsoi to attend that seminar where he could receive instruction on how to apply for funding on certain research projects, particularly a Centre for Urban and Regional Affairs (“CURA”) grant. A portion of that invoice pertained to preliminary work on the Beijing project. An invoice – dated September 1, 2007 and in the sum of \$3,000 – tab 10 – was submitted by Tsoi to Asir Studio and pertained to services rendered from August 1 to August 27, 2007 relating to research and background material for a Social Sciences and Humanities Research Council of Canada (“SSHRC”) – pronounced Shirk – grant. Roecker stated the SSHRC grant was obtained through UBC and those funds went into the UBC research account and the invoice, although directed to: Inge Roecker, University of British Columbia - was paid by UBC. Her only connection with said grant was in her role as a Professor of Architecture. Roecker stated the invoice – tab 11 – dated September 1, 2007 – in the sum of \$600 – was directed by Tsoi to Roecker – personally – at her home address and pertained to certain services provided between August 28 and August 31, 2007, including video editing and setting up projecting equipment and preparing files for presentation. Roecker stated the video project as described in the invoice under: Details, was to facilitate her teaching and was not funded by UBC nor did it have any connection to Asir Studio. Roecker stated the invoice – tab 12 – in the sum of \$2,000 and dated September 30, 2007 – for services rendered by Tsoi from September 17 to September 30, 2007, related to a submission for SSHRC’s CURA grant. The invoice was directed to her personally and she paid it since it had no connection with either UBC or Asir Studio. The invoice – tab 13 – for \$4,000 in total and dated December 31, 2007 – pertained to services – \$3,000 – rendered on the Hotel Beijing Project between November 1 and November 30, 2007 and expenses in the sum of \$1,000. Roecker stated this invoice should have been submitted to her business – Architekten – in Stuttgart – but she paid Tsoi and obtained reimbursement from that unincorporated Germany entity. The work performed by Tsoi had no connection with Asir Studio, Vancouver. The invoice – tab 14 – in the sum of \$3,000 – also dated December 31, 2007 – pertained to services performed from December 10 to December 30, 2007 on the Hotel Beijing project. Roecker stated she paid this invoice personally and obtained reimbursement from her business in Germany. Roecker stated she received an invoice – tab 15 – from Tsoi – dated April 10, 2008 – directed to: Inge Roecker, Principal Asir studio, which sought payment in the sum of \$1,704.65 for Goods and Services Tax (“GST”) at the rate of 6% based on the total supply of consulting services in the total sum of \$28,400.85 during 2007. At the bottom of the invoice, Tsoi included his GST registration number and a business number issued by Canada Revenue Agency (“CRA”) and – just above the salutation and signature – added the phrase, “Your business is appreciated.” Roecker stated she received another invoice – tab 16 – dated April 10, 2008 wherein Tsoi requested payment of the sum of \$150 attributable to the

applicable GST – 5% – on the total amount of \$3,000 billed by him for services rendered between January 1 and January 30, 2008. Roecker identified an invoice – tab 17 – dated April 4, 2008 wherein Tsoi purported to bill her for various items. The invoice is reproduced in Appendix A.

[4] Roecker stated there had been no amount charged for GST on any previous invoice submitted by Tsoi and that there had been no agreement to pay any so-called late charges. She sought some advice from her Chartered Accountant and declined to pay those invoices – tabs 15, 16 and 17 – and did not understand why Tsoi purported to bill her for \$2,915, including \$165 for GST – based on 55 hours work – performed for an entity described as Living lab. (hereinafter referred to as Living lab without the “.”) nor did she understand why Tsoi billed a total of \$2,650 – including \$150 GST – for alleged additional work done on the Hotel Beijing project since there had never been any agreement in that respect as she understood that all work performed by Tsoi in that regard had been billed earlier and paid in full. Roecker stated she had not agreed to pay a 4% “Administration Fee” included by Tsoi in his April 4, 2008 invoice.

[5] Roecker was cross-examined by counsel for the Respondent. Roecker stated she has a business licence from the City of Vancouver to carry on the business of Asir Studio. She stated that with respect to the research grants, even though the work performed by Tsoi was in accordance with UBC guidelines, he had no other connection with the university. He had graduated from the School of Architecture in 2006 and was no longer a student. Roecker described the office at her residence as suitable for carrying out small projects and it was equipped with a computer and appropriate design software. Currently, Asir Studio operates from an office in Vancouver. Roecker stated she did not actively market Asir Studio but obtained some work through various contacts. Business cards were designed by Tsoi in the names of: Living lab and Asir architekten – Exhibit R-1 – by Tsoi at Roecker’s request. Roecker stated the business entity Living lab had no connection with Asir Studio and believed the business card had been created for a specific purpose or event. Architekten had a website and a printout – Exhibit R-2 – which listed certain members of Staff (“Mitarbeiter”) – including Tsoi – whose picture appeared on the page together with his e-mail address at Asir Studio in Vancouver. Roecker stated that following Tsoi’s graduation in 2006, she requested him to accompany her to an exhibition in Berlin. In Vancouver, she assigned certain work to him and Asir Studio had a business relationship with other architects. There was no office staff and another recent graduate worked in the office in her residence and both she and Tsoi had a key. Tsoi used his laptop and was retained to perform specific tasks and was not required to perform any office duties such as cleaning or filing or to perform

other duties not directly connected with his own work. Roecker stated the UBC Hampton Grant had a limit on the billable hourly rate – which she cannot recall – but the allotted funds were exhausted when Tsoi submitted an invoice – tab 5 – in the sum of \$3,000 for additional work done in April, 2007. As a result, she paid Tsoi with her own funds. With respect to other projects, she adopted the policy of paying his invoices before she had been paid by the user/client as – sometimes – she had to wait up to 6 months for payment. Roecker stated that when Tsoi provided his services, she made an initial estimate of the time required to perform a specific task or to achieve a particular result but the total amount of remuneration to be paid was fixed and clearly stated. Regarding the invoice – tab 8 – Tsoi worked in Roecker's Stuttgart office for a month-and-a-half and was provided with accommodation. Tsoi – who is fluent in Mandarin – travelled to Beijing with one of Roecker's German business associates and met with clients there. Roecker stated Tsoi was expected to perform his services personally throughout the course of their working relationship but – after the fact – discovered he had hired other people – on occasion – to help him meet a deadline. Roecker stated the first reference to GST was contained in Tsoi's invoice – tab 15 – dated April 10, 2008 – and that was followed by other invoices which also included GST. Counsel referred Roecker to a worksheet – Exhibit R-3 – apparently prepared from a German-language template – which appeared to contain certain details about work performed on various projects. Roecker stated she was not familiar with that document nor with the description of work and noted the lack of any entry in the column – Kontrolle – which would normally indicate someone involved in Architekten had approved those billable items. Roecker stated Tsoi was not a partner in any of her business ventures during the relevant period but may have become a partner in the Living lab project. Roecker stated she retained the right to Tsoi's entire work product but he was permitted to include it in his portfolio for personal marketing purposes. Roecker denied having paid Tsoi 3 weeks – or any – vacation pay and cannot recall any bonus of \$100 or any other amount. Roecker was referred to a greeting card – Exhibit R-4 – expressing best wishes for the holiday season and the New Year which was printed in English, German and Mandarin. It included the names of Roecker, 3 associates from Stuttgart and Tsoi, and contained contact information for both Asir Studio and Architekten. Roecker stated the card was sent to people with whom she had business dealings throughout the year. In her view, it was important for young architects to receive public acknowledgment for having worked on a project and she adhered to this concept as a matter of policy. Roecker had a partner in the Living lab project but was a sole proprietor of Asir Studio. She stated Tsoi never requested that she issue him a T4 slip.

[6] Roecker was cross-examined by the Intervenor, Tsoi. Roecker acknowledged that as a professor, she is aware of the abilities of her students and when opportunities arise from time to time for work that is more interesting, she seeks out students or recent graduates with special expertise. When contracted to perform specific tasks, workers can utilize any work product provided credit is attributed to all participants.

[7] Counsel advised the Appellant's case was closed.

[8] Sengsack Tsoi was called to the stand by counsel for the Respondent. Tsoi stated he is a designer living in Vancouver. He has a BLA degree and received his Master's degree in architecture in January, 2006. Although he is currently employed by an architect, he is not a member of BCIA nor is he seeking such registration. Tsoi stated that while a student in the Master program, he worked for Roecker at her Stuttgart office for 3 months during the summer of 2005. Following graduation in 2006, he went to Ontario but in February or March received a call from Roecker to do some work in connection with an exhibition in Berlin. He accepted – verbally – and performed most of the required work at Roecker's in-home Asir Studio office. Tsoi stated that after the exhibition, Roecker asked him to work on a full-time basis on projects in Vancouver through the auspices of either Asir Studio or UBC or Roecker's German office. Tsoi's understanding of the arrangement was that he would be paid the sum of \$2,500 per month – later increased to \$3,000 – and that he would work 5 days a week from 9 a.m. to 5 p.m. to earn the relevant base amount. He stated that he often worked many extra hours. Tsoi acknowledged there was no discussion with Roecker about his working status but there were references to his “career”, and to “opportunity” and to “growth” in the context of being included in Roecker's future projects. Roecker assigned him specific tasks to perform in relation to a particular project. Tsoi stated he did not pay attention to his status during the working relationship, although he thought he was “probably an employee” and that the concept of an independent contractor did not “cross my mind.” Tsoi created a website detailing his academic work performed while studying at UBC. At Roecker's request, he designed the business cards – Exhibit R-1 – and understood that all entities – Asir Studio, Architekten and Living lab were operated by Roecker but for different purposes. In his opinion, Asir Studio and Living lab were the same business. Tsoi stated he drafted an invoice – tab 8 – in euro because Roecker requested it. All other invoices were billed in Canadian dollars. Tsoi stated there was substantial overlap in the application of his efforts and even when in Germany, had performed services in relation to Vancouver projects. During the relevant period, Tsoi stated he performed a variety of duties for Roecker including answering the office telephone and responding to matters relating to the business of Asir Studio. He had a key to Roecker's house and arrived at work between 9:00 and 9:30 in the morning. He did

not have a permanent residence until September, 2007 and either lived with friends or stayed in a room in Roecker's residence. With respect to tools and equipment, Tsoi stated the Stuttgart office was well-equipped and the Asir Studio workspace had a desk, chair, two printers, computer, and wireless Internet access but he used his laptop which he had owned while a student at UBC. At one point, the laptop needed extensive repairs and Roecker paid approximately \$1,000 to fix it because she needed to retrieve stored data. During the interim, Tsoi used the Asir Studio computer. Tsoi stated he usually met with Roecker nearly every Tuesday to discuss the week and received a list of tasks created by her that he was to perform. The Hotel Beijing project was larger in scope and required more meetings with periodic reviews of his work. Tsoi stated the intellectual concept belonged to Roecker. Tsoi stated he was kept busy by Roecker even when not devoting his time and efforts to a specific project. With respect to the Chinatown project funded by the Hampton Grant, Tsoi acknowledged that his invoices – tabs 1-4, inclusive – were paid by UBC and that the university issued him a T4 slip indicating the usual source deductions had been made. With respect to that particular funding, Tsoi stated that a person with 3-D expertise had to be hired at a price which reduced the amount remaining to be paid to himself and Katya, another worker. Tsoi stated he knew those grant funds were used up when he submitted an invoice – tab 5 – to Asir Studio for work done during April, 2007. Throughout the relevant period, Tsoi stated he submitted invoices to whatever entity Roecker requested and provided therein details of work done and amounts owing – including expenses – if applicable. Tsoi stated he did not work for two weeks at one point but still received payment of \$3,000 for that month and received the sum of \$100 from Roecker together with a Christmas card. Tsoi stated he registered for GST purposes after obtaining advice because his accounting/tax consultant advised that he appeared to have been a self-employed consultant while providing his services to Roecker's businesses. On the other hand, since he had been reimbursed for his expenses – even though some repayments of small amounts for office supplies were not shown on some invoices – the consultant also expressed the opinion that he may have been an employee. Tsoi stated he decided to send further invoices – tabs 15, 16, 17 – to Roecker in which he charged GST on the amount requested for services rendered previously. When he did not receive payment from Roecker nor any response whatsoever, he decided to seek clarification of his working status and requested a ruling which he received – tab 18 – on July 28, 2008 – informing him that he was an employee of "Inge Roecker op. Asir Studio for the period from January 1, 2007 to February 1, 2008" and that he was engaged in both insurable and pensionable employment. Subsequent to said ruling, Tsoi stated he requested Roecker provide him with a T4 slip but she refused on the basis he was not her employee. Tsoi stated he had no investment in any of the businesses carried on by

Roecker and could earn additional revenue only through negotiation with Roecker depending on the project or task.

[9] Tsoi was cross-examined by counsel for the Appellant. Counsel referred Tsoi to the invoice – tab 17 – wherein he billed – *inter alia* – Asir Studio for additional work performed during 2007. Tsoi agreed that – in 2008 – when submitting invoices to Roecker, he considered he was doing so as an independent contractor/consultant and that Roecker probably accepted this characterization. However, subsequent to receiving written materials from CRA and examining the various criteria discussed therein, he decided to obtain a ruling. On further reflection, Tsoi stated he considered he had been an employee during the relevant period but did not know what Roecker thought at that time about this working status. Tsoi stated he is 32 years old and has had summer jobs where he was an employee where he worked regular hours, was paid every two weeks, and had usual source deductions from his pay cheques. In those jobs, he completed time sheets and submitted them to his employer and payment was based on the information contained therein. Tsoi agreed he had never received a conventional pay cheque from Roecker and no deductions were ever taken for Employment Insurance (EI), Canada Pension Plan (CPP) and income tax. Roecker paid his invoices using an Internet payment transaction service. Tsoi stated he understood the different aspects of Roecker’s activities and when in Germany had worked on the Performa and Eppingen projects and billed for his services – tab 8 – in euro and that payment was made to his Vancouver bank account. Tsoi re-iterated that he also did some work on these projects while in Vancouver and had submitted the invoice in euro at Roecker’s request. Tsoi stated he had been advised by his tax consultant to bill Roecker for “4% late fees” for consulting services provided between June 1 and September 31, (*sic*) – 2007, as well as an “administration fee” of 4% – based on a total billing of \$28,400.85 for 2007 – because his adviser warned him CRA could be demanding payment – from him – of approximately \$8,000 in income tax for the 2007 taxation year.

[10] Counsel for the Respondent closed the Minister’s case.

[11] Tsoi – in his capacity as Intervenor – did not adduce any evidence.

[12] Counsel for the Appellant pointed out the relevant period was from January 1, 2007 to February 1, 2008 and that in issuing the decision confirming the earlier ruling, the Minister specifically named the Appellant in her capacity as operator of Asir Studio which is located in Vancouver. As a result, any reference to an office in Germany – paragraph 6(f) of the Reply to the Notice of Appeal (“Reply”) – is irrelevant as that pertains to a separate business entity of Roecker through which she

carries on an architectural practice that is distinct and apart from Asir Studio. In addition, any inclusion of the money earned by Tsoi which was paid to him directly by UBC in connection with the project known as the Hampton Grant cannot form any part of Tsoi's alleged insurable and pensionable earnings while providing various services to Roecker. Counsel submitted it is important to examine the working relationship during the entire period – not just the relevant period as issued in these appeals. Tsoi – as a young, well-educated professional – was well aware of the distinction between receiving a pay cheque in the course of ordinary employment – with the usual source deductions – and providing professional services where invoices were submitted from time to time while working on a project that was limited not only by scope and time but also by the amount of money devoted to it. Counsel submitted that recent jurisprudence supported the view that a highly-skilled worker performing services without supervision in the context of a chosen work environment – where a series of short-term engagements were normal – had been considered as an independent contractor and not an employee. Tsoi – as a recent graduate from the Master's program in architecture – fit into this category while providing his services to various entities on a flat-rate contract basis, for a limited time and often within a clearly-stated limit on remuneration. Counsel's view of the evidence was that if Tsoi had been asked – at any point during the relevant period – to characterize his working status, he would have stated that he was an independent contractor and that this response would not only have been consistent with the intentions of the parties throughout the working relationship but supported by an objective examination of their actions within the context of relevant indicia applicable to the determination of working status. Counsel referred to the content of the various invoices submitted by Tsoi which consistently referred to his services having been rendered under the category, "Contract Type" and acknowledged the funding limit of a particular project or task by using the words, "Flat Rate". The rate per contract varied according to several factors and none of the invoices linked the amount billed to any specific number of hours devoted to enumerated tasks. Counsel pointed out it was Tsoi – alone – who created and submitted the various invoices during the relevant period, even those sent to Roecker which sought payment for GST – on the basis of his registration as a supplier – and also for alleged additional services and items such as late fees and administration charges that were not due and owing and had never been agreed to by Roecker. On an objective basis, counsel submitted that a document – such as the invoice at tab 17 – would not have been sent to any employer by someone who sincerely believed that he or she was an employee. Counsel submitted the evidence had demonstrated Tsoi was not an employee of Roecker – operating as Asir Studio – nor in any other capacity during the relevant period.

[13] Counsel for the Respondent conceded Tsoi was not an employee of Roecker during the period covered by the Chinatown project funded by UBC and identified as the Hampton Grant. However, that concession did not extend to the payment of the invoice – tab 5 – which was paid by Roecker to Tsoi after the funding from UBC had ended. Counsel referred to jurisprudence which warned against accepting contractual labelling and that there were instances where young professionals – apparently operating with considerable latitude in many respects – were held to be employees due to the nature of control and the absence of risk and the lack of opportunity for profit. Counsel submitted the facts in the within appeals did not support a finding that there was any mutual intention by the parties – at any point during the relevant period – that Tsoi’s services would be delivered as an independent contractor. With respect to the invoiced amounts not being linked to any specific number of hours billed at a particular rate, counsel suggested it was reasonable to infer from the evidence that Tsoi worked a 40-hour week – more or less – and that his regular payments throughout 2007 were similar to a monthly salary. Counsel submitted it was reasonable for Tsoi not to have made any distinction between the Appellant as the proprietor/operator of Asir Studio in Vancouver and as a registered architect practising in Germany through Architekten or as an individual involved in a project known as Living lab. Counsel submitted the decisions of the Minister should be confirmed.

[14] Tsoi – as Intervenor – submitted that gaps in invoicing during the relevant period were explained by his testimony that there were periods when he performed work for Roecker which was not billed to any particular file or project.

[15] In several recent cases including *Wolf v. The Queen*, 2002 DTC 6853, *The Royal Winnipeg Ballet v. The Minister of National Revenue – M.N.R.*, 2006 DTC 6323, *Vida Wellness Corp. (c.o.b. Vida Wellness Spa) v. Canada (Minister of National Revenue - M.N.R.)*, [2006] T.C.J. No. 570 and *City Water International Inc. v. Canada (Minister of National Revenue – M.N.R.)*, [2006] F.C.J. No. 1653, there was a clearly-expressed mutual intent of the parties that the person providing the services would be doing so as an independent contractor and not as an employee. In other cases, there is a dispute about whether one of the parties agreed at the outset – or thereafter during the course of the working relationship – to provide services in the context of a particular status. In the within appeals, neither party addressed that issue and they forged a working relationship from March 2006 to December 31, 2007 or – according to the Respondent – until January 31, 2008. I will defer further discussion of the issue of intent and consider the various factors as required by the relevant jurisprudence.

[16] The Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983 – (“*Sagaz*”) dealt with a case of vicarious liability and in the course of examining a variety of relevant issues, the Court was also required to consider what constitutes an independent contractor. The Judgment of the Court was delivered by Major, J. who reviewed the development of the jurisprudence in the context of the significance of the difference between an employee and an independent contractor as it affected the issue of vicarious liability. After referring to the reasons of MacGuigan, J.A. in *Wiebe Door Services Ltd. v. Canada (Minister of National Revenue - M.N.R.)*, [1986] 2 C.T.C. 200 and the reference therein to the organization test of Lord Denning - and to the synthesis of Cooke, J. in *Market Investigations Ltd. v. Minister of Social Security*, [1968] 3 All E.R. 732 - Major, J. at paragraphs 47 and 48 of his Judgment stated:

47 Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in *Market Investigations*, supra. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.

48 It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.

I will examine the facts in the within appeals in relation to the indicia set forth in the Judgment of Major, J. in *Sagaz*.

Level of Control:

[17] The Minister assumed – at paragraph 6(g) of the Reply - that Tsoi was a student of Roecker during the relevant period. That is not correct. Tsoi graduated with a MArch degree in January, 2006. She was no longer his professor but developed a working relationship with him that was consistent with being a mentor, a colleague, a co-venturer and an experienced professional in the discipline of architecture. Tsoi worked from an office in Roecker's home and could come and go as he pleased. There is no credible evidence upon which to base a finding that Tsoi had any office duties such as “phone work” or “office clean up”, although if he was

working in the Asir Studio office, it is reasonable to assume he answered the telephone instead of letting it ring. There is no evidence that the work performed by Tsoi required any licenses to work on his own as assumed by the Minister - at paragraph 6(q) – and Roecker was not a member of AIBC nor is there any evidence to suggest the work performed by Tsoi at any point during his relationship with Roecker and her various businesses required any such licenses except perhaps a business license if required by the City of Vancouver. Roecker – in her role as Professor of Architecture – played a role in obtaining the Hampton Grant for the Chinatown project and Tsoi submitted 4 invoices – tabs 1-4, inclusive – to UBC and was paid by that institution. It is apparent the Minister assumed Tsoi was under the control and supervision of Roecker for purposes of the Chinatown project when her role was limited to assuring UBC that Tsoi’s invoices qualified for payment in accordance with the guidelines of the Hampton Grant. Another graduate student worked on that project and an expert in 3-D digital models was retained. Tsoi’s last invoice – tab 4 – directed to UBC and dated June 11, 2007 – pertained to the period from May 1 to June 11, 2007. Subsequently, when enabled by a grant from SSHRC, Tsoi provided further services pertaining to the Chinatown project from August 1 to August 27, 2007 and submitted an invoice – tab 10 – to Roecker at UBC and the amount of \$3,000 was paid by the University from its research account.

[18] In May, 2007, Tsoi billed Roecker for services rendered in the preparation of a portfolio binder concerning AIBC registration for foreign-trained students. Tsoi was an individual with particular knowledge in that area and had participated in the Master program at UBC. There is no evidence to support the Minister’s assumption that – in this respect – Roecker provided any “training and guidance”. (See paragraph 6(w) of the Reply.)

[19] In June, 2007, Tsoi performed work in respect of the Asir Studio website and for some drawings and photos for publication. Since Roecker in her capacity as sole proprietor of Asir Studio was paying for that work, she approved it – as anyone would – prior to payment. Tsoi could enter the workspace in Roecker’s home as he chose and other than Tsoi’s recollection of his usual work pattern when involved in a project, there is no basis for the Minister to have assumed – at paragraph 6(v) – that Roecker “determined the Worker’s hours and days of work.”

[20] In July, Tsoi was in Stuttgart working in an office shared by Roecker and her associates and billed for his services in creating a 3-D site model and rendering perspectives for a factory and a parkade. There is no evidence upon which to base a finding that he was subject to any direct supervision or control or that he was required to report at any particular time. Tsoi performed work pertaining to the Hotel

Beijing project and traveled to Beijing with one of Roecker's German associates to meet directly with the clients. He performed other services on this project and there is no suggestion that he received supervision from Roecker except that – as an architect registered in Germany – she would bear ultimate responsibility for his work. Tsoi purchased supplies as needed and billed for them later. There is no evidence to suggest he required any prior approval.

[21] The advice provided by a former professor and experienced professional within the same discipline who pays for services rendered to a former student may seem to an outsider as though it constitutes orders or commands within the context of a master-servant relationship. However, Tsoi was a professional providing services within the overall design industry and could perform all tasks that did not require registration with AIBC.

Provision of equipment and/or helpers:

[22] Roecker testified that she found out after the fact that Tsoi had hired helpers to assist him in meeting a deadline on one or more of his various projects. Tsoi did not rebut that assertion during his testimony. The main equipment required throughout was Tsoi's personal laptop and he was capable of surfing the net while couch-surfing at various friends' residences until he acquired his own place in September, 2007. Tsoi testified that he had been reimbursed by Roecker for smaller items such as office supplies but none of his invoices included any claim for reimbursement and his testimony that – somehow – he was re-paid for these purchases is not borne out by any other evidence, documentary or otherwise.

Degree of financial risk and responsibility for investment and management:

[23] Tsoi incurred the risk of not receiving payment for his invoice – tab 5 – directed to Asir Studio which although dated April 30, 2007 – related to work done – but not billed – for work done in April on the Chinatown project and the grant funding had been exhausted by the time UBC paid Tsoi the amount billed by the invoice at tab 4. There is no indication in the April 30 invoice as to the number of hours devoted to the work performed during April but if Roecker had not paid that amount he would have incurred a loss. That payment by Roecker was clearly an *ex gratia* payment since there was no legal obligation on her part to pay Tsoi. She testified she did so as a professor to encourage the completion of research and to lay the foundation for future funding rather than to waste time and effort in seeking an extension of the original grant. In that sense, the payment was not extraordinary. Roecker paid approximately \$1,000 to repair Tsoi's laptop because it contained

research data that was important to her. There is no evidence that she was under any obligation to do so and the cost associated with that computer failure would otherwise have been Tsoi's responsibility. He did not have any investment in Asir Studio nor in Architekten but it is reasonable to infer that although he did not hold a current equity position in Living lab, he appeared to be providing his services in the expectation he could become an active participant as a partner or co-venturer. It appears the Living lab concept was in the developmental stage and was not an entity that required the services of any employee(s). Tsoi was required to interact with other professionals but there is no indication he was fixed with any responsibility to manage anyone other than himself.

Opportunity for profit in the performance of his tasks:

[24] Tsoi was able to control his costs because he used the Asir Studio office space when in Vancouver and was reimbursed for his travel costs from Vancouver to Stuttgart and – presumably – was provided with an airline ticket and had his expenses paid for travel to and from Beijing from Stuttgart. Tsoi stated he could earn more money on a project through negotiation with Roecker but the evidence tended to support the view that nearly every project he worked on during the relevant period was limited in scope and in funding so his acceptance of an assignment carried with it knowledge of the revenue that could be generated.

The issue of intent:

[25] Although there was no discussion between Roecker and Tsoi about his working status at any time during their entire working relationship – including the relevant period applicable to these appeals – it is important to examine their conduct. It is obvious that Roecker never considered herself to be an employer of Tsoi when retaining his services or when acting as a facilitator to assist him in receiving payment for specific services during a limited term through the awarding of certain grants either directly from UBC or from SSHRC, as administered by UBC. An examination of the entire period leads to the conclusion that Tsoi considered himself to be a consultant who provided his services – at a flat rate – pursuant to individual contracts and performed specific tasks to achieve a particular result. He acted throughout as an independent service provider, albeit one who was just starting out in his profession, and as someone who was content to work on that basis. Even after consulting a tax adviser – probably in March, 2008 – he realized that he could owe a substantial amount of income tax for the 2007 taxation year. Understandably, the prospect of dealing with collectors from CRA in the near future was revelatory in nature since it convinced him that – in retrospect – he had always been an employee of Roecker's various businesses both in Vancouver and in Germany. To some extent,

one can sympathize with Tsoi's confusion and lack of certainty about his working status. Anyone who works in this field is aware that subtle differences within a complex array of circumstances can lead to different results and that it is often difficult to reconcile those seemingly-opposite decisions, made initially by the Minister and subsequently by courts on appeal.

[26] Tsoi attempted to demonstrate that he was paid on a basis similar to – if not equivalent to – a monthly salary and that he had received the equivalent of holiday pay and a small bonus at Christmas. Roecker denied any such payments and those characterizations. A review of the invoices submitted after the expiry of the Hampton Grant for the Chinatown project indicate Tsoi did not provide any services during October, 2007 that were the subject of any billing. On December 31, 2007 he submitted two invoices – tabs 13 and 14 – for work done between November 1 and November 30, 2007 and December 10 and December 30, 2007, respectively. Tsoi's invoice – tab 11 – dated September 1, 2007 was for services rendered in connection with a video project and he billed Roecker the sum of \$600 for either 3 or 4 days work. The invoice – tab 15 – sent by Tsoi to Roecker - where he billed for GST on the total amount of his remuneration for services provided during 2007 and expressed his gratitude for retaining his services – was the first in a series of three. These invoices can be characterized not only as bizarre but as a clumsy attempt – borne of desperation while contemplating a potential income tax liability of \$8,000 – to get rid of that shortfall by extracting additional money from Roecker. This ploy had some merit since she had paid him – voluntarily – for his extra – and un-funded – work on the Chinatown project, repaired his computer and provided him with a place to work at Asir Studio and a place to stay within her residence, when necessary. With respect to the matter of conduct of the parties during their relationship, where the version related by Roecker conflicts with the one proffered by Tsoi, I prefer Roecker's testimony. That preference is not only reasonable in the context of the overall circumstances but also because Tsoi has a powerful motivation to adapt events to conform with the reinvigorated view of himself, not as a young professional specially-trained entrepreneur, but as an employee. A review of the plain wording of Tsoi's invoices – tabs 16 and 17 – in which he sought payment for “additional services” or “late fees” and “administration fees” together with a further amount of GST is indicative of his thought processes in April, 2008. When it became apparent to Tsoi that Roecker was not going to pay any of these retroactive invoices or the unilaterally-imposed, newly-invented charges and fees, Tsoi sought a ruling on his status and embraced the label of employee assigned by the Rulings Officer.

[27] In the case of *Dempsey v. Canada (Minister of National Revenue – M.N.R.)*, [2007] T.C.J. No. 353; 2007 TCC 362, Hershfield, J. considered the appeal of a

service provider who – as a chartered accountant – had entered into a written contract with the payor in which he agreed to perform auditing and professional services in relation to loans and grants made by said payor and to do so as an independent contractor who would submit invoices based on a stipulated daily rate with a maximum amount during the contract period based on a maximum number of days. Pursuant to said contract, the parties agreed the worker would be an independent contractor. The worker submitted invoices each month for the number of hours worked on each day of the month and GST was charged on the relevant amount. In the course of his analysis at paragraph 39, Hershfield, J. commented as follows:

Analysis

[39] If intentions were determinative of the status of the Appellant's engagement, there would be no doubt that his engagement would be that of an independent contractor. The Appellant not only accepted the status imposed by circumstance and organizational structure but played out the role of an independent contractor until it was no longer to his benefit to do so. He honoured the contract which defined his status by becoming a GST registrant, invoicing his time with GST set out and bidding on new contracts as existing contracts expired. He claimed business expenses on his income tax return and paid no union dues as a public servant. He had no benefits and was not part of the public service pension plan. These were all contractually established, understood and accepted by the Appellant. At the end of the day, he preferred the independent status that this contractual arrangement gave rise to, although when he lost it he seized on the opportunity to deny that which he had accepted for almost 13 years.

[28] Hershfield, J. continued as follows at paragraphs 41 – 44, inclusive:

[41] Applying the *Wiebe Door* tests the Appellant is clearly an employee. He was engaged in a wholly subordinate position as subject as any professional employee would be to do what his manager required of him. He had no freedom as to how, when or where he performed his services. In virtually every sense he was subject to the control of his manager at WD. He was treated in almost every respect as an employee and held out as one. He did what was asked of him in the context of his position. He had to correct reports as dictated by persons above him and was subject to deadlines. The specific list of duties that the Appellant was contracted to do for WD was an expanding list that covered everything that WD might require of an employee in the position occupied by the Appellant and even then at the direction of his manager, the Appellant did more than the specified duties that he was contracted to perform and he was paid in the normal course for such services. The reason for that is that he was under the complete control of his manager in WD as any employee would be. If control over the worker is the relevant test, the Appellant's engagement status is employment.

[42] The Appellant provided no tools in respect of the performance of his duties. All of the tools were provided by WD. If the provision of tools is the relevant test, the Appellant's engagement status is employment.

[43] The Appellant worked at a fixed rate for fixed hours and had no expenses in respect of the performance of his duties. There is no more entrepreneurial risk of loss or opportunity for profit than any employee working on a fixed term employment contract basis has. That he had no job security at the end of the term of each contract and that he had to bid on each contract are compatible with a series of negotiated term employment contracts. During the term of each contract, work was done for a wage. If this is the relevant test, the Appellant's engagement status is employment.

[44] All the *Wiebe Door* factors point to the Appellant being an employee. This is not a close case where the intentions of the parties can impact the status of the engagement.

[29] Earlier – at paragraph 31 of his reasons, Hershfield, J. commented that “it was pretty much a foregone conclusion that the Appellant’s contract would be renewed as long as the job existed.” That *de facto* security was not present in the within appeals. In fact, the opposite was true. There were a series of short-term engagements each for a specific purpose that was limited by time and a specific allocation of funds.

[30] Tsoi was able to use whatever work product he created as a result of his contractual arrangements with Roecker in the course of promoting himself as a designer having BLA and MArch credentials, providing he credited other participants. By engaging in a variety of projects, Tsoi was able to gain experience and to perform what Roecker referred to as “interesting work”.

[31] In the within appeals, the issue of intention concerning a working status has less significance than in some cases where there is either complete agreement over the characterization at the outset or a dispute where one party asserts a particular status was applicable and the other maintains the opposite was true. Here, one has to assign intent based on the actions of the parties throughout their entire working relationship and particularly during the relevant period which I find should have expired on December 31, 2007, as there is no credible evidence that Tsoi performed any services to Roecker after that date, although he sent invoices either for purported additional services performed in January, 2008 or for services performed earlier but not billed. Based on a review of the evidence, I am satisfied the parties intended to deal with each other throughout on the basis Tsoi was an independent consultant who was free to accept or refuse each new challenge and who agreed to abide by the terms

applicable to a particular task, series of tasks or project including limitations on time and funding.

[32] Taking all of the circumstances into account and considering the indicia as set forth in *Sagaz, supra*, and after considering relevant jurisprudence, I conclude that Tsoi provided his services to Roecker as an independent contractor and was not an employee of Roecker pursuant to a contract of service during the relevant period.

[33] In the event I am wrong in this conclusion, there are further matters to consider. The ruling and subsequent confirmation by the Minister did not address the issue of the number of insurable and pensionable hours nor the amount of insurable and pensionable earnings arising from the alleged employment with Roecker. Counsel for the Respondent advised he was unable to obtain any information from the Appeals Officer in this respect.

[34] Section 90(1) of the *EIA* reads as follows:

Request for ruling

90. (1) An employer, an employee, a person claiming to be an employer or an employee or the Commission may request an officer of the Canada Revenue Agency authorized by the Minister to make a ruling on any of the following questions:

- (a) whether an employment is insurable;
- (b) how long an insurable employment lasts, including the dates on which it begins and ends;
- (c) what is the amount of any insurable earnings;
- (d) how many hours an insured person has had in insurable employment;
- (e) whether a premium is payable;
- (f) what is the amount of a premium payable;
- (g) who is the employer of an insured person;
- (h) whether employers are associated employers; and
- (i) what amount shall be refunded under subsections 96(4) to (10).

Time limit

(2) The Commission may request a ruling at any time, but a request by any other person must be made before the June 30 following the year to which the question relates.

Ruling

(3) The authorized officer shall make the ruling within a reasonable time after receiving the request.

Presumption

- (4) Unless a ruling has been requested with respect to an insured person,
- (a) an amount deducted from the remuneration of the person or paid by an employer as a premium for the person is deemed to have been deducted or paid in accordance with this Act; or
 - (b) an amount that has not been so deducted or paid is deemed not to have been required to be deducted or paid in accordance with this Act.

[35] Once a ruling is made, the right to appeal is stated in section 91:

Appeal of Rulings

91. An appeal to the Minister from a ruling may be made by the Commission at any time and by any other person concerned within 90 days after the person is notified of the ruling.

[36] Pursuant to section 103(1) of the *EIA*, the jurisdiction of the Tax Court of Canada is stated as follows:

Appeal to the Tax Court of Canada

103. (1) The Commission or a person affected by a decision on an appeal to the Minister under section 91 or 92 may appeal from the decision to the Tax Court of Canada in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder within 90 days after the decision is communicated to the Commission or the person, or within such longer time as the Court allows on application made to it within 90 days after the expiration of those 90 days.

[37] Since it is not possible to refer a decision from an appeal of a ruling back to the Minister for any reconsideration and reassessment as opposed to a decision on an appeal from an assessment under section 92, it would be necessary for me to make a finding that Tsoi had worked a certain number of insurable hours and had both

insurable and pensionable earnings in a particular amount. In my view, there is ample jurisdiction to do so pursuant to the wording of section 104(1) which states:

Authority to decide questions

104. (1) The Tax Court of Canada and the Minister have authority to decide any question of fact or law necessary to be decided in the course of an appeal under section 91 or 103 or to reconsider an assessment under section 92 and to decide whether a person may be or is affected by the decision or assessment.

[38] Prior to the amendment to the *EIA* in 1990, the Minister was empowered only to determine whether a worker was employed in insurable employment and other matters such as the length of employment and the amount earned were decided by the Umpire and the Board of Referees. The quantum of insurable employment is now calculated in hours and it may require some investigation and subsequent analysis of information gathered by an Appeals Officer to arrive at those amounts. Of course, it is easier when a Record of Employment has been provided or if either the payor or the worker has maintained time records. Sometimes it is necessary for the Minister to apply certain *Regulations* – such as those found in sections 9.1 and following – in order to determine hours of insurable employment and insurable earnings. In the within EI appeal, the Minister only decided the issue of insurability. There is no evidence as to how the insurable hours and the insurable and pensionable earnings were calculated – if at all – nor was there any inclusion in the decision letter with respect to the number of insurable hours worked by Tsoi during the relevant period.

[39] Another relevant provision to consider is paragraph 5(1)(a) which defines insurable employment and reads:

Types of insurable employment

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

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

[40] Had I been required to do so following a confirmation of the Minister's decision, any subsequent calculation of Tsoi's insurable hours and insurable and pensionable earnings would have excluded the work on the Hampton Grant Chinatown project which was remunerated by UBC – from which source deductions

were made – and also the *ex gratia* payment by Roecker in the sum of \$3,000 to pay his invoice – tab 5 – dated April 30, 2007.

[41] I fail to understand how any money earned by Tsoi when providing services to Roecker's German business entity – Architekten – constitutes employment in Canada when that professional practice was carried on by her pursuant to registration with the governing body in Germany and in association with other architects. There was a clear distinction between that business and Roecker's proprietorship – Asir Studio – in Vancouver and was carried on during the hiatus in the UBC academic year. I fail to comprehend how the Minister could have considered that Tsoi's services in this regard constituted employment in Canada.

[42] I have dealt with this matter because it is important in cases like this for the Rulings Officer and the Minister – on appeal from a ruling – to decide the number of insurable and pensionable hours and the amount of insurable and pensionable earnings. In the within appeals, it is probable that all the money paid by UBC to Tsoi – whether via the Hampton Grant or as administrator of the subsequent SSHRC grant – either was – or would be – included for purposes of issuing assessments to Roecker had the Minister's decisions been confirmed in these Reasons. Similarly, the money paid – either directly or indirectly by Roecker – for services rendered to Architekten may have been the subject of a calculation for assessment purposes either in whole or in part even though she obtained reimbursement from that German business entity. Any such inclusion would run counter to the clearly-expressed wording in the ruling – and the subsequent confirmation by the Minister – that it applied only to Inge Roecker Op. Asir Studio from January 1, 2007 to February 1, 2008.

[43] In the event I had decided Tsoi was engaged in both insurable and pensionable employment with Roecker during the relevant period, my view of the evidence leads me to conclude that the only payments eligible for inclusion in any calculation of insurable and pensionable earnings would have been for those services billed in the following invoices:

Tab 6	\$1,500	For preparation of AIBC portfolio binder
Tab 7	\$3,000	Services rendered in relation to Asir Studio website and drawings
Tab 9	\$1,500	Re: Grant Writing Workshop and preliminary research – Hotel Beijing with no allocation of amounts billed for each task
Tab 11	\$600	Video project and preparing files for presentation
Tab 12	\$2,000	Preparation for submission of

		SSHRC CURA grant
Total:	\$8,600	

[44] With respect to the matter of insurable hours, that number would have been arrived at by dividing the insurable earnings - \$8,600 - by the rate of \$25 per hour which can be inferred from the evidence and an examination of the billings and the nature of the projects. This calculation would have resulted in 344 insurable hours.

[45] To make it clear, this specific analysis was undertaken only to demonstrate what would have been required had I arrived at the opposite conclusion.

[46] Both appeals are allowed and the decisions of the Minister – both dated July 28, 2008 – are hereby varied to find that:

Sengsack Tsoi was not engaged in either insurable or pensionable employment with Inge Roecker Op. Asir Studio from January 1, 2007 to February 1, 2008.

Signed at Sidney, British Columbia this 4th day of May 2010.

“D. W. Rowe”

Rowe D.J.

Appendix A

604-1111 Beach Ave.
Vancouver, BC V6T1T9
P: 604.760.7429 E: seng@sbci.com

ASIR studio
Prof. Inge Roecker, Principal
#1207- 989 Nelson Street
Vancouver, British Columbia V6Z 2S1 Canada
P: 604.688.5611

Date: April 04, 2008
Invoice#_16

Project Name: Outstanding Fees for Consulting Services 2007
Billing from: January 01, 2007
Billing to: Dec. 31, 2007

Total Amount Due This Invoice: 7,418.40 CAN dollars
Payable upon receipt

Details:

1_4% Late fees for late payments for consulting services provided between June 1, 2007 to September 31, 2007. The amount subject to this charge is 12,900.85 CAN dollars.
Total late fee = 516.03 CAN dollars (GST exempt)

2_Outstanding fee for design and maintenance of the Living lab. Website
Design and development of the Living lab. Website (40 Hours)
Hosting and Domain Set-up (5 Hours)
Maintenance and Updating. Transscape, Public Networks, Director Biographies (10 Hours)
Total outstanding fee = 55 Hours x \$50/ Hour = 2,750 + 165.00 (GST) = 2,915 CAN dollars

3_Art Now Hotel_Beijing, China
Additional hours required to complete conceptual design for client presentation.
Total additional fee = 50 Hours x \$25/Hour=2,500 +150.00 (GST) = 2,650 CAN dollars

4_Administration Fee
Administrative fees required for completing consulting services between January 1, 2007 to December 31, 2007. This fee is 4% of the total fees provided during this period which covers accounting and administrative duties as requirement to complete the consulting services provided to your firm. The total amount subject to this fee is 28,400.85 CAN Dollars.
Total administrative fee = 1,136.03 + 68.16 (GST) = 1337.37 CAN dollars

Your business is appreciated

Sincerely,



Dr. A. [Name] [Title] [Address]

CITATION: 2010 TCC 230

COURT FILE NOS.: 2009-2667(EI); 2009-2668(CPP)

STYLE OF CAUSE: INGE ROECKER OP ASIR STUDIO AND
THE MINISTER OF NATIONAL
REVENUE AND SENGSACK TSOI

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 19, 2010

REASONS FOR JUDGMENT BY: The Honourable D.W. Rowe, Deputy Judge

DATE OF JUDGMENT: May 4, 2010

APPEARANCES:

Counsel for the Appellant: Michael W. Hunter, Q.C.

Counsel for the Respondent: Amandeep K. Sandhu

For the Intervenor The Intervenor himself

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