

Docket: 2010-3488(IT)I

BETWEEN:

STÉPHANE CHABAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on May 18, 2011, at Quebec City, Quebec.

Before: The Honourable Justice Pierre Archambault

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Anne-Marie Boutin

JUDGMENT

The appeal from the reassessment made pursuant to the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Ottawa, Canada, this 20th day of September 2011.

"Pierre Archambault"

Archambault J.

Translation certified true
on this 26th day of January 2012.

Erich Klein, Revisor

Citation 2011 TCC 438
Date: 20110920
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REASONS FOR JUDGMENT

Archambault J.

Staff, student or employee? The employment status of Canadian postdoctoral researchers remains unclear – many are struggling with the tax issues that arise from the ambiguity.¹

[1] This citation partially summarizes the issue raised by the appeal of Stéphane Chabaud, Ph.D. A more complete way to state it is: Do the amounts Mr. Chabaud received as a postdoctoral fellow constitute salary, a bursary, scholarship or fellowship, or a research grant? If they are a bursary, scholarship or fellowship, do they give rise to the exemption provided for in paragraph 56(3)(a) of the *Income Tax Act* (Act)?

[2] The answer to these questions could have serious repercussions on the funding of university research.² Exceptionally, counsel for the respondent asked that the

¹ "Taxing Times for Canadian Postdocs" (August 26, 2010), online:

<http://www.nature.com/news/2010/100826/full/news.2010.429.html?s=news.rss>.

² In a letter addressed to Stéphane Dion, Gilles Duceppe, Stephen Harper, Jack Layton and Elizabeth May, Mr. Chabaud, as president of the *Association des stagiaires postdoctoraux de l'Université Laval*, wrote:

reasons for my decision be transmitted in writing since there are a number of cases of the same nature that are awaiting the result of this appeal. According to counsel for the respondent, it is the Court's first opportunity to consider the application of the paragraph 56(3)(a) exemption to postdoctoral fellows. Although, from a strictly legal standpoint, these reasons do not constitute a precedent since this is an appeal under the informal procedure,³ I hope they may enlighten the tax authorities and Canadian taxpayers and contribute to the debate on the touchy issue raised by this appeal.

[3] Mr. Chabaud is appealing from an assessment made by the Minister of National Revenue (Minister) for the 2008 taxation year. The Minister added \$36,101 to Mr. Chabaud's income as a bursary pursuant to paragraph 56(1)(n) of the Act. This amount represents the excess of the \$36,601 Mr. Chabaud received over the amount of \$500, as provided in that paragraph. At the hearing, the respondent indicated that she was amending the basis of the assessment, asserting that the entire amount of \$36,601 should have been included in Mr. Chabaud's income as a research grant pursuant to paragraph 56(1)(o) of the Act. Although this provision does not provide for a \$500 deduction, the respondent recognizes that the Court does not have the power to increase the tax established in the assessment. As a result, the amount that could be included in Mr. Chabaud's income cannot exceed \$36,101. Alternatively, the respondent stated that if paragraph 56(1)(o) did not apply, she would again rely on paragraph 56(1)(n), and she argued that Mr. Chabaud was not entitled to the bursary exemption because he was not eligible for the education tax credit, notably because he was not a student and was not enrolled in any educational program.

[4] At the beginning of the hearing, I raised the possibility that the \$36,601 might be considered as employment income under section 5 of the Act since the Minister had assumed as a fact that Mr. Chabaud had received \$36,601 for his research work at the Laboratoire d'organogénèse expérimentale (Experimental Organogenesis

[TRANSLATION]

The Canada Revenue Agency decision could lead to a serious reduction in the number of postdoctoral fellows, which would mean reduced supervision, hence a reduction in the quality of training of graduate students from Quebec universities. This reduction could be prejudicial to Quebec's industries and international companies could become less interested in setting up or remaining in Quebec.

(Exhibit A-13, undated document.) It should be noted that Exhibits A-8 to A-19 were marked after the hearing, since these documents were submitted during Mr. Chabaud's arguments (Mr. Chabaud was self-represented) and since it was more appropriate to consider them as exhibits than as assistance documents produced during argument.

³ Section 18.28 of the *Tax Court of Canada Act*.

Laboratory) (LOEX) at the Centre hospitalier affilié universitaire de Québec (CHA) research centre and that his research was done under the supervision of a researcher at that laboratory. Counsel for the respondent asked permission to provide written submissions regarding the application of section 5 of the Act, and I agreed. I also allowed Mr. Chabaud to provide his own written submissions in reply to those presented by counsel for the respondent.

[5] Mr. Chabaud considers himself a student even though he has a doctoral degree, and he believes that the work he performed for a period of around five years was university training. Moreover, the money he received was, in his opinion, a bursary or fellowship entitling him to the exemption provided for in paragraph 56(3)(a) of the Act.

[6] In making the assessment, the Minister relied on the following assumptions of fact set out in paragraph 6 of the Reply to the Notice of Appeal:

[TRANSLATION]

6. In determining the tax payable by the appellant, the Minister relied on the following assumptions of fact:

- (a) in 2005, the appellant obtained a doctoral degree in molecular biology from the Université de Montréal;
- (b) in October 2005, the Laboratoire d'organogenèse expérimentale at the Centre hospitalier affilié universitaire de Québec research centre (LOEX) offered the appellant a position as postdoctoral researcher;
- (c) during the taxation year in question, the appellant held this position of researcher at LOEX;
- (d) during the taxation year in question, the appellant's research was related to cellular and molecular biology and was conducted under the supervision of Véronique Moulin, who was a professor at the surgical department of the Faculty of Medicine at the Université Laval and a researcher at LOEX;
- (e) during the taxation year in question, to conduct her research, Véronique Moulin received "operating grants" from the Canadian Institutes of Health Research (CIHR);
- (f) for his research work at LOEX during the taxation year in question, the appellant received a total of \$36,601;

(g) this \$36,601 came from the "operating grants" mentioned above.

[Emphasis added.]

[7] Mr. Chabaud admitted all these facts, with the following exceptions: regarding subparagraph (a), he stated that he earned his diploma in November 2004, not in 2005; regarding subparagraph (b), he described his position as that of a postdoctoral fellow rather than a researcher, which applies as well to subparagraph (c); finally, regarding subparagraph (f), Mr. Chabaud denies he received the amount of \$36,601 for his research work.

[8] First, it would be useful to reproduce the English and French versions of the relevant provisions of the Act:

56(1)

Scholarships, bursaries, etc.

(n) the amount, if any, by which

(i) the total of all amounts (other than amounts described in paragraph 56(1)(q), amounts received in the course of business, and amounts received in respect of, in the course of or by virtue of an office or employment) received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer, other than a prescribed prize,

exceeds

(ii) the taxpayer's scholarship exemption for the year computed under subsection (3);

56(1)

Bourses d'études, de perfectionnement, etc.

n) l'excédent éventuel :

(i) du total des sommes (à l'exclusion des sommes visées à l'alinéa q), des sommes reçues dans le cours des activités d'une entreprise et des sommes reçues au titre, dans l'occupation ou en vertu d'une charge ou d'un emploi) reçues au cours de l'année par le contribuable à titre de bourse d'études, de bourse de perfectionnement (fellowship) ou de récompense couronnant une oeuvre remarquable réalisée dans son domaine d'activité habituel, à l'exclusion d'une récompense visée par règlement,

sur :

(ii) l'exemption pour bourses d'études du contribuable pour l'année, calculée selon le paragraphe (3);

...

Research grants

(o) the amount, if any, by which any grant received by the taxpayer in the year to enable the taxpayer to carry on research or any similar work exceeds the total of expenses incurred by the taxpayer in the year for the purpose of carrying on the work, other than

...

Exemption for scholarships, fellowships, bursaries and prizes

56(3) For the purpose of subparagraph (1)(n)(ii), a taxpayer's scholarship exemption for a taxation year is the total of

(a) the total of all amounts each of which is the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment

(i) in an educational program in respect of which an amount may be deducted under subsection 118.6(2) in computing the taxpayer's tax payable under this Part for the taxation year, for the immediately preceding taxation year or for the following taxation year, or

(ii) in an elementary or

...

Subventions de recherches

o) l'excédent éventuel de toute subvention reçue au cours de l'année par le contribuable pour la poursuite de recherches ou de tous travaux similaires sur le total des dépenses qu'il a engagées pendant l'année dans le but de poursuivre ces travaux, à l'exception :

...

Exemption pour bourses d'études, bourses de perfectionnement (*fellowships*) ou récompenses

56(3) Pour l'application du sous-alinéa (1)n(ii), l'exemption pour bourses d'études d'un contribuable pour une année d'imposition correspond au total des sommes suivantes :

a) le total des sommes représentant chacune la somme incluse en application du sous-alinéa (1)n(i) dans le calcul du revenu du contribuable pour l'année au titre d'une bourse d'études ou d'une bourse de perfectionnement (*fellowship*) reçue relativement à son inscription :

(i) soit à un programme d'études pour lequel une somme est déductible en application du paragraphe 118.6(2) dans le calcul de l'impôt à payer par le contribuable en vertu de la présente partie pour l'année, pour l'année d'imposition précédente ou pour l'année d'imposition subséquente,

secondary school educational program,

(b) the total of all amounts each of which is the lesser of

(i) the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship, bursary or prize that is to be used by the taxpayer in the production of a literary, dramatic, musical or artistic work, and

(ii) the total of all amounts each of which is an expense incurred by the taxpayer in the taxation year for the purpose of fulfilling the conditions under which the amount described in subparagraph (i) was received, other than

(A) personal or living expenses of the taxpayer (except expenses in respect of travel, meals and lodging incurred by the taxpayer in the course of fulfilling those conditions and while absent from the taxpayer's usual place of residence for the period to which the scholarship, fellowship, bursary or prize, as the case may be, relates),

(B) expenses for which the taxpayer is entitled to be reimbursed, and

(C) expenses that are otherwise deductible in computing the taxpayer's income, and

(c) the lesser of \$500 and the amount by which the total

(ii) soit à un programme d'études d'une école primaire ou secondaire;

b) le total des sommes représentant chacune la moins élevée des sommes suivantes :

i) la somme incluse en application du sous-alinéa (1)n(i) dans le calcul du revenu du contribuable pour l'année au titre d'une bourse d'études, d'une bourse de perfectionnement (fellowship) ou d'une récompense dont il doit se servir dans la production d'une oeuvre littéraire, dramatique, musicale ou artistique,

(ii) le total des sommes représentant chacune une dépense engagée par le contribuable au cours de l'année en vue de remplir les conditions aux termes desquelles la somme visée au sous-alinéa (i) a été reçue, à l'exception des dépenses suivantes :

(A) ses frais personnels ou de subsistance, sauf ses frais de déplacement, de repas et de logement engagés en vue de remplir ces conditions, pendant qu'il était absent de son lieu de résidence habituel pour la période visée par la bourse d'études, la bourse de perfectionnement (*fellowship*) ou la récompense,

(B) les dépenses qu'il peut se faire rembourser,

(C) les dépenses déductibles par ailleurs dans le calcul de

described in subparagraph (1)(n)(i) for the taxation year exceeds the total of the amounts determined under paragraphs (a) and (b).

118.6. Definitions

(1) For the purposes of sections 63 and 64 and this subdivision,

“designated educational institution” means

(a) an educational institution in Canada that is

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Higher Education and Science of the Province of Quebec for the purposes of *An Act respecting financial assistance for students* of the Province of Quebec, or

...

“qualifying educational program” means a program of not less than three consecutive weeks duration that provides that each student taking the program spend not less than ten hours per week on courses or work in the program and, in respect of a program at an institution described in the definition “designated

son revenu;

c) 500 \$ ou, s’il est moins élevé, l’excédent du total visé au sous-alinéa (1)n(i) pour l’année sur le total des sommes déterminées selon les alinéas a) et b).

118.6. Définitions

(1) Les définitions qui suivent s'appliquent aux articles 63 et 64 et à la présente sous-section.

« établissement d'enseignement agréé »

a) Un des établissements d'enseignement suivants situés au Canada:

(i) université, collège ou autre établissement d'enseignement agréé soit par le lieutenant-gouverneur en conseil d'une province au titre de la *Loi fédérale sur les prêts aux étudiants*, soit par une autorité compétente en application de la *Loi fédérale sur l'aide financière aux étudiants*, ou désigné par le ministre de l'Enseignement supérieur et de la Science de la province de Québec pour l'application de la *Loi sur l'aide financière aux étudiants* de cette province,

...

« programme de formation admissible » Programme d'une durée minimale de trois semaines consécutives, aux cours ou aux travaux duquel l'étudiant doit consacrer dix heures par semaine au moins et qui, s'il s'agit d'un

educational institution” (other than an institution described in subparagraph (a)(ii) of that definition), that is a program at a post-secondary school level but, in relation to any particular student, does not include a program if the student receives, from a person with whom the student is dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program other than

(a) an amount received by the student as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the student,

(b) a benefit, if any, received by the student because of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3, or because of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*, or

(c) an amount that is received by the student in the year under a program referred to in subparagraph 56(1)(r)(ii) or (iii), a program established under the authority of the *Department of Human Resources and Skills Development Act* or a prescribed program;

“specified educational program” means a program that would be a qualifying educational program if the definition “qualifying educational

programme d'un établissement visé à la définition de « établissement d'enseignement agréé » (sauf un établissement visé au sous-alinéa a)(ii) de cette définition), est de niveau postsecondaire, à l'exclusion du programme au titre des frais duquel l'étudiant reçoit d'une personne avec laquelle il n'a aucun lien de dépendance une allocation, un avantage, une subvention ou un remboursement, qui n'est :

a) ni une somme reçue au titre d'une bourse d'études, d'une bourse de perfectionnement (fellowship) ou d'une récompense couronnant une oeuvre remarquable réalisée dans son domaine d'activité habituel;

b) ni un avantage reçu en raison d'un prêt consenti à l'étudiant conformément à la *Loi fédérale sur les prêts aux étudiants* ou à la *Loi sur l'aide financière aux études*, L.R.Q., ch. A-13.3, ou en raison d'une aide financière consentie à l'étudiant conformément à la *Loi fédérale sur l'aide financière aux étudiants*;

c) ni une somme que l'étudiant reçoit au cours de l'année dans le cadre d'un programme mentionné aux sous-alinéas 56(1)(r)(ii) ou (iii), d'un programme établi sous le régime de la *Loi sur le ministère des Ressources humaines et du Développement des compétences* ou d'un programme visé par règlement.

« programme de formation déterminé » Programme qui serait un

program” were read without reference to the words “that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program”.

Education credit

(2) There may be deducted in computing an individual's tax payable under this Part for a taxation year the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

(a) \$400 is multiplied by the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution, and

(b) \$120 is multiplied by the number of months in the year (other than months described in paragraph (a)), each of which is a month during which the individual is enrolled at a designated educational institution in a specified educational program that provides that each student in the program spend not less than 12 hours in the month on courses in the program,

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the

programme de formation admissible s'il n'était pas tenu compte du passage « au cours ou aux travaux duquel l'étudiant doit consacrer 10 heures par semaine au moins » dans la définition de « programme de formation admissible ».

Crédit d'impôt pour études

(2) Le montant obtenu par la formule suivante est déductible dans le calcul de l'impôt payable par un particulier en vertu de la présente partie pour une année d'imposition:

$$A \times B$$

où:

A représente le taux de base pour l'année;

B la somme des produits suivants:

a) 400 \$ multipliés par le nombre de mois de l'année pendant lesquels le particulier est inscrit à un programme de formation admissible comme étudiant à temps plein d'un établissement d'enseignement agréé,

b) 120 \$ multipliés par le nombre de mois de l'année (sauf ceux visés à l'alinéa a)) dont chacun est un mois pendant lequel le particulier est inscrit à un programme de formation déterminé d'un établissement d'enseignement agréé, aux cours duquel l'étudiant doit consacrer au moins 12 heures par mois.

Pour que le montant soit déductible, l'inscription du particulier doit être

designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition “designated educational institution” in subsection (1), the individual has attained the age of 16 years before the end of the year and is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation.

attestée par un certificat délivré par l'établissement — sur le formulaire prescrit contenant les renseignements prescrits — et présenté au ministre et, s'il s'agit d'un établissement d'enseignement agréé visé au sous-alinéa a)(ii) de la définition de cette expression au paragraphe (1), le particulier doit avoir atteint l'âge de 16 ans avant la fin de l'année et être inscrit au programme en vue d'acquérir ou d'améliorer sa compétence à exercer une activité professionnelle.

Income from office or employment

5. (1) Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

Revenu tiré d'une charge ou d'un emploi

5. (1) Sous réserve des autres dispositions de la présente partie, le revenu d'un contribuable, pour une année d'imposition, tiré d'une charge ou d'un emploi est le traitement, le salaire et toute autre rémunération, y compris les gratifications, que le contribuable a reçus au cours de l'année.

[Emphasis added.]

Historical evolution of the legislative provisions

[9] To properly understand the context in which the debate herein is taking place, it is useful to remind ourselves of the legislative evolution of the relevant provisions, namely, paragraph 56(1)(n) and subsection 56(3) of the Act.

[10] A first relevant amendment replaced the expression "*bourse de recherches*" used as the French equivalent of "fellowship" in paragraph 56(1)(n) with "*bourse de perfectionnement*" in 1979.⁴ Another amendment is that described by Associate Chief Justice Rossiter in *Dimaria*:⁵

⁴ S.C. 1979, c. 5, subs. 15(4).

⁵ *Dimaria v. Canada*, [2008] T.C.J. No. 102 (QL), 2008 TCC 114, paras. 30 and 32.

30 Paragraph 56(1)(n) of the *Act* states as follows:

...

(n) **scholarships, bursaries, etc.** -- the amount, if any, by which

(i) the total of all amounts (other than ... amounts received in respect of, in the course of or by virtue of an office or employment) received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer (other than a prescribed prize),

...

32 The Supreme Court of Canada had occasion to consider the interplay between section 6 and paragraph 56(1)(n) in its 1986 [actually, 1983] decision, *R. v. Savage*.⁶ Subparagraph 56(1)(n)(i) was amended to include the underlined portion in 1986, as a direct result of that decision.

[11] The technical interpretation⁷ that supports this statement reads as follows:

Paragraph 56(1)(n) includes in the income of a taxpayer for a year certain scholarships, bursaries and prizes for achievement to the extent that the total of such amounts exceeds \$500. Some employers give awards, prizes or similar payments to their employees in the course of their employment. Generally, these payments represent taxable benefits to the employee and are intended to be fully included in income. However, a recent court decision indicated that certain of these awards might qualify for the \$500 exemption. This amendment, which applies to amounts received after May 23, 1985, clarifies that work-related and business-related awards, prizes and similar payments do not qualify for the \$500 exemption.

[Emphasis added.]

[12] Subsection 56(3), which creates the bursary exemption, was added by S.C. 2001, c. 17, subs. 39(2), and applies to the 2000 and subsequent taxation years. Essentially, the exemption was increased from \$500 to \$3,000 for bursaries received for registration in an educational program for which an amount was deductible under subsection 118.6(2) in the calculation of tax payable.⁸

⁶ [1983] 2 S.C.R. 428, [1983] C.T.C. 393.

⁷ Technical notes, 56(1)(n).

⁸ This version of paragraph 56(3)(b) states:

[13] As of 2006, the exemption became full (S.C. 2007, c. 2, subs. 6(3)). As of 2007, new conditions were added to improve the exemption (S.C. 2007, c. 35, subs. 17(1)). These conditions are not relevant for the purposes of the debate herein.

[14] In the Notice of Ways and Means Motion to Amend the *Income Tax Act* and *Income Tax Regulations*, dated March 4, 2010, the Minister of Finance announced certain measures to amend the bursaries exemption scheme and the education credit. In particular, the exemption would be limited to tuition fees and the cost of materials related to an educational program in the case of full-time students. However, the most relevant measure for the purposes of the issue raised by this case is that announced at paragraph 17, which states:

(17) That, for the 2010 and subsequent taxation years, a program at a post-secondary school level referred to in the definition "qualifying education program" in subsection 118.6(1) of the Act does not include a program that consists primarily of research, unless the program leads to a diploma from a college or a Collège d'enseignement général et professionnel (CEGEP), or a bachelor, masters or doctoral degree (or an equivalent degree).

[Emphasis added.]

[15] Clarifications are provided in the supplementary information found with the March 4, 2010, federal budget:

Budget 2010 proposes to clarify that a post-secondary program that consists principally of research will be eligible for the Education Tax Credit, and the scholarship exemption, only if it leads to a college or CEGEP diploma, or a bachelor, masters or doctoral degree (or an equivalent degree). Accordingly, post-doctoral fellowships will be taxable.

[Emphasis added.]

(b) the lesser of
(i) \$3,000 and
(ii) the total of all amounts each of which is the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the year in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment in an educational program in respect of which an amount may be deducted under subsection 118.6(2) in computing the taxpayer's tax payable under this Part for the year.

[16] In the House, the Minister of Finance repeated the government's position that this budgetary measure was not intended to change Canada's tax policy with respect to postdoctoral research fellowships:

40 :3 Hansard – 15 (2010/3/23)
(1440)
[English]

Hon. Jim Flaherty (Minister of Finance, CPC):

Mr. Speaker, there has been no change in the tax policy in Canada with respect to post-doctoral fellowships. It is exactly the tax policy that was followed by the Liberal government.

We made a big change several budgets ago and that is with regard to scholarships. Pure scholarships are not taxable in Canada. However as we know, post-doctoral fellows work. Just as the Liberal government recognized, they are going to be paid through the fellowships, \$70,000 a year. As I said earlier, they should pay their fair share of taxes in Canada.

[Emphasis added.]

[17] On June 8, 2010, the Minister of Finance also wrote to the president of the Canadian Association of Postdoctoral Scholars, Marianne Stanford. In his letter, the Minister explained the government's position regarding its budgetary measure. He wrote in particular:

Unlike post-secondary students enrolled in courses and pursuing a degree or diploma, post-doctoral fellows can be compared to a number of other professionals, such as lawyers, medical residents and accountants, where there is a period of paid training at the beginning of their careers. Similar to those other professionals, the compensation received by post-doctoral fellows is taxable.

[Emphasis added.]

[18] The Minister of Finance also reminds Ms. Stanford of the tax policies the Canadian government adopted to fund science and technology initiatives. He notes, in particular, that between 2005 and 2010, the government provided \$2.2 billion in funding for this purpose. He adds, at page 2 of his letter:

Budget 2010 continues this momentum by providing additional new funding in support of post-secondary education, research and innovation. Notably, \$45 million over five years will be provided to the granting councils to establish and administer

the Canada Postdoctoral Fellowships Program. When fully implemented, the program will annually fund 140 new taxable two-year post-doctoral fellowships valued at \$ 70,000 each per year. Other support includes the following

[Emphasis added.]

[19] At the time of writing these reasons, the Act had not yet been amended to give effect to the March 4, 2010, Notice of Ways and Means setting out the measures to amend the bursary exemption and education tax credit scheme.

Administrative interpretation of the bursary exemption

[20] The Commissioner of the Canada Revenue Agency (CRA), William V. Baker, wrote to Danielle Morin and Louise Dandurand of the Conférence des recteurs et des principaux des universités du Québec (CREPUQ) on June 24, 2008, to inform them that the CRA did not consider postdoctoral fellows as students and that they should not be issued a T2202A. In his letter, he states, at pages 1, 2 and 3:

[TRANSLATION]

Dear Ms. Morin and Ms. Dandurand:

This is further to your May 15, 2008, letter regarding the taxation of certain amounts paid to postdoctoral fellows. You stated that some officers of the Canada Revenue Agency indicated that these amounts are taxable wages while other officers feel they are non-taxable bursaries. Moreover, you indicated that the status of fellow results in a T2202A *Tuition, Education, and Textbook Amounts Certificate* being issued. You note that Quebec's universities consider postdoctoral fellows at their institutions to be students in training and that they should be treated as such in tax matters. You asked us to determine whether postdoctoral fellows are students for the purposes of the *Income Tax Act* (the Act).

. . .

In regard to postdoctoral fellows' status as students, we feel that, when a postdoctoral fellow participates in an internship for the purpose of acquiring research expertise that is more specialized or complementary, the postdoctoral fellow is not a student for the purposes of the Act. No T2202A should be issued to a person who is not a student enrolled in an educational program covered by the Act. The fact that a postdoctoral fellow receives a bursary is not a determining factor regarding the relevance of issuing a T2202A.

[Emphasis added.]

[21] In his letter, the CRA Commissioner defines "scholarship", "fellowship", "research grant" and "salary" as follows:

[TRANSLATION]

Scholarships are amounts granted to students to allow them to continue their studies. They usually help the student continue studies for the purpose of obtaining a university degree, diploma or certificate.

Fellowships are similar to scholarships, in that they are amounts granted to people to allow them to continue their studies. However, the recipient is usually a graduate student and the payor, a university, charitable organization or similar organization. Generally, fellowships are awarded for doctoral studies or for postdoctoral work.

An amount received as a fellowship is usually included as such in the recipient's income, but it can sometimes be included as a research grant. The treatment depends on the main purpose for granting the fellowship, determined based on the terms and conditions of the fellowship.

If the main purpose of the fellowship is for the recipient to continue his or her studies and training, for himself or herself, for example, if he or she is studying to obtain a doctoral degree, the bursary is included in income as a fellowship, even if the research is conducted in order to achieve this goal. However, if the main purpose of the fellowship is to conduct research for his or her own benefit, for example, to increase knowledge in a particular field by making a discovery or finding a new interpretation for known facts, the fellowship is a research grant for the purposes of the Act.

The amounts granted to postdoctoral fellows could also be considered salary if there is an employment relationship between the payor and the fellow. The issue of whether a relationship between two parties is an employment relationship remains a question of fact that depends on the analysis of the circumstances of each case. A number of factors must be considered to resolve this issue. One is to establish whether the person who was hired to perform the services does so as an employee or in some other capacity. The level of control the payor has over the worker's activities is also considered and the opportunity the worker has to profit from the performance of his or her duties. All other relevant factors must also be considered.⁹

⁹ In a memorandum addressed to the Tax Services Office for Eastern Quebec, the CRA's position is described as corresponding with that expressed by the Commissioner. (See Exhibit A-10.) According to the March 27, 2009, letter by Daniel Petit, MP for Charlesbourg – Haut – Saint-Charles, Parliamentary Secretary to the Minister of Justice and Attorney General for Canada, addressed to the Minister of National Revenue (Exhibit A-17), the prohibition against issuing T2202A forms seems to have been ordered following a technical measure adopted by the CRA in July 2007.

[Emphasis added.]

Reaction from academia to the administrative interpretation and treatment of fellows in the education environment in Quebec

[22] Despite the position expressed by the CRA Commissioner, the members of CREPUQ decided to disregard it and to continue to issue T2202As. The members relied on opinions contrary to those of the CRA to justify their interpretation. In particular, this is what the Université Laval,¹⁰ through its director of Financial Services and its dean of the Faculty of Graduate Studies, wrote to postdoctoral fellows on February 20, 2009 (Exhibit A-16):

[TRANSLATION]

The Université Laval is hereby issuing the T2202A–*Tuition, Education, and Textbook Amounts Certificate*, for the months in 2008 during which you received postdoctoral training.

We consider it very important to let you know that this decision goes against the public position issued by the Legislative Policy and Regulatory Affairs Branch of the Canada Revenue Agency (hereinafter the CRA). According to the CRA, fellows receiving postdoctoral training are not students and therefore not eligible for this tax credit.

The Université Laval and the entire Quebec university network obtained opinions from their tax advisors that were contrary to that issued by the CRA. Moreover, the matter of student status for postdoctoral fellows has not yet been the subject of a decision by a tribunal competent in tax matters. There is therefore significant uncertainty regarding the issue.

Despite this controversy, Quebec universities have unanimously decided to issue the T2202A to their fellows in postdoctoral training. To ensure that its fellows are treated fairly, the Université Laval is conforming to the decision to issue the T2202A for 2008.

The Université Laval must remind you, however, that it is possible, should you use this form when filing your income tax return for 2008, that the tax authorities will make corrections to your tax return, in accordance with their public position. These

¹⁰ For the position of the Université de Sherbrooke, see Exhibit A-15; for McGill University's, see Exhibit A-12; and for that of the INRS, see Exhibit A-11.

corrections may lead to additional taxes and interest. Moreover, any challenge to the CRA decisions will have to be made by you personally.

[Emphasis added.]

[23] To improve the position of postdoctoral fellows, some institutions implemented additional measures. In particular, the following is what the Assistant to the Science Director and Director of Graduate Studies at the INRS wrote (Exhibit A-11):

[TRANSLATION]

The INRS is working on developing operating procedures for registering postdoctoral fellows that, we hope, may allow them to be considered students for tax purposes. In a few weeks, you will be informed of the simple procedures we will implement in order to improve the student records of postdoctoral fellows so they meet as fully as possible the definition of student for tax purposes. We will also inform you of the possible ways to proceed, regarding source deductions for 2009.

[Emphasis added.]

[24] Mr. Goutier, an official from the Ministère de l'Éducation, du Loisir et du Sport of Quebec (MEQ), gave his department's position on the status of postdoctoral fellows. He indicated that fellows are considered researchers in a university institution. They are neither employees¹¹ nor students. However, he recognized that, even if the fellows may not be considered university employees, there could still be a contract of employment, an employer-employee relationship between a university and a fellow. He justified this statement by noting that there is a service rendered, remuneration paid and a relationship of subordination between the university and the fellow. However, such a relationship does not exist when the postdoctoral fellow obtains a grant directly from a research institute. In such cases, the amount would be a bursary, not salary. He did mention, however, that the nature of the contractual relationship with the postdoctoral fellow was irrelevant for the MEQ's administrative purposes.

[25] In either case, the fellow is not considered a "student". This is true even if the holder of a doctoral degree can increase his or her knowledge by participating in postdoctoral training. For Mr. Goutier, a student is a person involved in university training that leads to a degree, which is not the case with postdoctoral fellows. The difference between a master's or doctoral student who participates in a research

¹¹ I presume that he meant as members of the university staff. They are temporary employees (for a determinate period) not permanent (for an indeterminate period).

project and a fellow is that the student spends a significant amount of time on his or her thesis. Moreover, Mr. Goutier clearly stated that postdoctoral training is not considered a 4th level of university education.

[26] The MEQ adopted this approach in its administration of education in Quebec. Grants are based on the number of students registered in various programs. Since postdoctoral fellows are not considered students, they are not taken into consideration when setting the amount of the operating grants to Quebec's universities. However, for capital grants, that is, the amounts given to universities to fund maintenance and construction of the buildings they need, the postdoctoral fellows are taken into account, as are employees and students. This is why it is useful for the Université Laval to provide the number of postdoctoral fellows to the MEQ.

[27] Among his duties, Mr. Goutier is program secretary for the MEQ. At articles 183 to 186 of the Université Laval's *Règlement des études* (Student Regulations) is a description of the three categories of students at the university (Exhibit I-7). They are: students registered in a program,¹² non-program students and auditors. Non-program students are those registered in one or more learning activities per session but not in a program; they are evaluated. Visiting students are non-program students. They are authorized to register in learning activities while still being registered at their home institution. Auditors are registered in one or more learning activities per session but are not entitled to evaluations.

[28] Under article 187 of the Student Regulations, a student is considered a full-time student when registered in learning activities worth 12 credits or more per session, and a part-time student when registered in learning activities worth fewer than 12 credits per session. According to Mr. Goutier, postdoctoral fellows are not covered by these categories of students. Another witness, the registrar of the Université Laval, confirmed this interpretation: postdoctoral fellows are not included in the categories of students described at articles 183 to 186 of the Université Laval's Student Regulations.

[29] The MEQ set up in 1992 a focus group, composed of six academics, that considered the issue of postdoctoral training. In October 1994, the group presented a report (Report on Postdoctoral Fellows) that summarized the consensus points, the issues to be resolved and the possible solutions regarding receiving postdoctoral

¹² At article 79 of the Student Regulations, [TRANSLATION] "program" is defined as [TRANSLATION] "a coherent and structured group of training activities developed based on the needs of society, a milieu or a community."

fellows in Quebec. This is how postdoctoral training is defined at pages 1 and 2 of this report:

[TRANSLATION]

2. Meaning of postdoctoral training

Postdoctoral training allows research expertise to be developed in a complementary or more specialized field. At the same time, it allows the evaluation of the fellow's ability to become an independent and high-level researcher. In many fields, without being a guarantee, postdoctoral training has become, in practice, a condition for obtaining a teaching position at a university or even a position as a researcher in some companies.

...

With particular regard to the natural and biomedical sciences, postdoctoral fellows are an integral part of the carrying out and development of research activities in universities. They provide a significant contribution to the development of knowledge and to the training of researchers. They contribute to the expansion of research teams' influence and their presence stimulates the circulation of new ideas.

In light of this, **postdoctoral fellows should be considered researchers whose employment status is temporary.**¹³

[Emphasis added.]

[30] The report defines "postdoctoral fellow" as follows:

[TRANSLATION]

3. Definition of postdoctoral fellow

A postdoctoral fellow is anyone who has held a Ph.D. (or the equivalent) for less than five years, or a professional degree in medicine, dentistry, optometry, pharmacy or veterinary medicine. Moreover, this person has undertaken to acquire, on a full-time basis and during a determined period, complementary or more specialized expertise by participating in university research work.

An additional five-year period after obtaining the required degree may be granted (making the total period of admissibility ten years from the obtaining of the degree) to anyone who left the workforce and stopped research activities due to child-bearing or child-rearing for a period of at least one year after obtaining the required degree.

¹³ Exhibit I-9. Bold characters are by the authors of the report.

4. Postdoctoral training: a developing activity

The local and international increase in Ph.D. graduates, the expansion of research activities in most disciplines, the increasing complexity of certain research tools, the near stability of positions available for renewing the teaching staff in universities, a greater awareness in business of the research-innovation-competitiveness link, and a difficult economic situation, are all

factors that feed the growth and development of postdoctoral training in Quebec and elsewhere.

[Emphasis added.]

[31] Under heading 5, [TRANSLATION] "Issues to resolve, possible solutions and recommendations", the following was suggested regarding the reception, status and working conditions of postdoctoral fellows at Quebec universities:

[TRANSLATION]

5.1 **Reception, status and working conditions of postdoctoral fellows at Quebec universities**

...

Postdoctoral fellows would like their status and contribution to the universities' activities to be better defined. Hence, the fellows' working conditions could be clarified, including benefits and access to various services offered by the universities.

Recommendation 1:

Considering that postdoctoral fellows must be considered as researchers with temporary employment status, it is recommended:

That universities clarify the status and working conditions of postdoctoral fellows accordingly.

Recommendation 2:

Based on the proposed status in recommendation 1 and the proposed definition above, and considering the need for more formal monitoring of postdoctoral fellows, it is recommended:

That each university conduct a permanent enumeration of the postdoctoral fellows it receives and that, to this end, they take into consideration recommendation 6, which proposes that CREPUQ implement a permanent enumeration for all of Quebec's universities.

Foreign fellows would like the constraints imposed by immigration services to be relaxed, both for themselves and their families. With other fellows, they are asking for a thorough review of their contribution to certain social benefit plans (for example, employment insurance, pension plans) based on the real possibilities of access to the benefits of the various schemes. They

wish the clarification of the tax treatment of their income at the various levels of government.

[Emphasis added.]

[32] The following is found under heading 5.2, [TRANSLATION] "Funding postdoctoral training":

[TRANSLATION]

Recommendation 6:

Considering a clearer definition of the status of postdoctoral fellows and their enumeration would lead to a better assessment when taking into account the costs incurred by universities to receive them;

[C]onsidering that postdoctoral fellows should be part of the temporary research staff in universities and that according to the MEQ-CREPUQ memorandum of understanding on the development of the information systems, CREPUQ is responsible for ongoing management of the system relating to personnel, it is recommended:

That CREPUQ, together with the universities and the MEQ, implement, as part of this information system, a permanent enumeration of the postdoctoral fellows received at all of Quebec's universities.

[Emphasis added.]

[33] Ms. Audette, dean of Graduate Studies at the Université Laval since 2007, indicated that among her duties were those of postdoctoral training coordinator. She works with the Registrar's Office, the laboratories, and the research directors. She testified about the importance of postdoctoral fellows at the university, not only for the fellows themselves but also in terms of the visibility their presence brings to the university. Moreover, it was recently decided to change the name of the Faculty of Graduate Studies to Faculty of Graduate and Postdoctoral Studies.¹⁴ In doing so, the Université Laval joined the Université de Montréal, McGill University and the University of Ottawa.

[34] The registrar referred to the document stating the reception and support policy for postdoctoral fellows, which was adopted by the university board in March 2005 (see Exhibit I-15). In this document, it is stated that postdoctoral training usually lasts from one to four years and cannot exceed five years or be less than six months

¹⁴ See Exhibit I-17 for the resolution adopting the new name. The resolution is dated May 12, 2011, that is, after the taxation year in question.

(paragraph 6). Paragraph 7 states that the postdoctoral fellow commits to undertaking or continuing research at the Université Laval in compliance with the policies and regulations in effect, particularly regarding intellectual property, and in a spirit of collaboration with co-workers. Paragraphs 7, 8 and 9 of this policy state:¹⁵

[TRANSLATION]

7. RESPONSIBILITIES

- Of the postdoctoral fellow

The postdoctoral fellow agrees to undertake or continue research at the Université Laval in a manner consistent with the policies and regulations in effect, particularly regarding intellectual property, and with the culture of the environment in which the postdoctoral fellow is received, to the best of his or her abilities and in a spirit of collaboration with his or her co-workers.

- Of the professor in charge of the training

The professor who agrees to receive a postdoctoral fellow agrees to ensure, in a manner consistent with the University's policies and regulations, in particular regarding intellectual property, support that is conducive to a fruitful collaboration in conducting a joint research project.

- Of the head of the receiving unit

The head of the receiving unit ensures that the postdoctoral fellow receives the support that is appropriate to his or her status and has the material resources and space necessary for the proper conduct of his or her research activities. The head of the receiving unit encourages the integration of the postdoctoral fellow into the receiving unit's activities in a manner consistent with the policies, regulations and collective agreements in effect at the University.

- Of the Registrar's Office

The Registrar's Office is responsible for the registration of postdoctoral fellows. It determines the admissibility of candidates, registers the postdoctoral fellows and provides them with an ID card. It also ensures the management and maintenance of the files of all the postdoctoral fellows the University receives.

- Of the Faculty of Graduate Studies

The Faculty of Graduate Studies coordinates the services offered by the University to postdoctoral fellows. With the cooperation of the Registrar's Office, the receiving units and the professors in charge of the training, it ensures that postdoctoral fellows

¹⁵ Exhibit I-15, in force in 2008. The complete text of paras. 1 to 5 was not provided.

are provided with favourable conditions during their stay. As needed, it establishes a conflict resolution mechanism.

8. FINANCIAL SUPPORT

Postdoctoral fellows may receive financial support coming entirely or in part from:

- a bursary from an external organization;
- a bursary from a research unit of the University;
- a bursary or salary paid from the grants or contracts obtained by one or more professors.

The University does not set the amounts of the grants the receiving units offer to postdoctoral fellows, or of the contracts professors may enter into with the fellows. It does, however, encourage the units to determine a minimum amount based on the amounts recommended by the granting organizations recognized in their field.

9. TEACHING

Postdoctoral fellows are an important intellectual resource for the University. Their main activity is research, but they can also contribute to the quality of the learning programs at the undergraduate, master's and doctoral levels by participating in teaching.

[Emphasis added.]

[35] In the Université Laval statutes dated September 2007, in Book II, [TRANSLATION] "University Members", students are described as follows:

[TRANSLATION]

Title III — Students

12. Students are individuals regularly registered as such in the University records. They make up various categories according to the object they are pursuing and the time devoted to their studies.
13. To register at the University, a person must first meet the admission requirements specific to a program or to one or more courses and be officially admitted to undertake or pursue these studies.
14. Registration is valid for one session; it must be renewed each session.
15. A regular student is either a student registered in an undergraduate, master's or doctoral program, or a non-program student.

A non-program student is one registered in a credit course without being registered in a program, and has the right to be graded, but not to a degree, or one registered in a non-credit learning activity; the level of the course determines the level of the student.

An auditor is a person admitted and registered in a course for the sole purpose of attending, without having the right to be graded for the course; the level of the course determines the level of the student.

A postdoctoral fellow is a person who has a Ph.D. or equivalent and who undertakes to acquire, on a full-time basis and during a fixed period, complementary or more specialized expertise by participating in research work at the University.

16. Depending on the time spent on his or her studies, a student is either a full-time or part-time student. The minimum time required to be a full-time student is set by regulation of the Executive Committee.

17. A student is attached to a faculty based on the following provisions:

1. a student registered in a program or in a main component of a program for which a faculty is responsible is a student in that faculty;
2. moreover, a student registered in a master's or doctoral program is also under the jurisdiction of the Faculty of Graduate Studies.

[Emphasis added.]

[36] At Title X, [TRANSLATION] "Management the Faculty of Graduate Studies", the following articles are of interest:

[TRANSLATION]

Title X — Management of the Faculty of Graduate Studies

176. The Faculty of Graduate Studies is managed by a dean appointed for four years by the Board of Directors.

Under the authority of the Vice-Rector of academics and international activities, and together with the deans, the Dean of the Faculty of Graduate Studies is responsible for academic quality at the master's and doctoral levels and coordinates the administration of these programs. On the basis of the presentations of the faculty councils, the Dean establishes the list of professors and other teaching staff who are authorized to direct students' research work and teach at the master's and doctoral levels.

...

179. The Dean is assisted by the Faculty of Graduate Studies Board.

This Board considers all general interest issues regarding master's and doctoral studies, in particular with respect to the evaluation of essays, dissertations and theses, accreditation and the conferring of diplomas. It also supports the Dean and the Faculty in establishing strategic monitoring for graduate studies and research training.

[Emphasis added.]

[37] Title XVIII of Book IV has provisions regarding degrees and diplomas, as follows:

[TRANSLATION]

Title XVIII — Degrees and diplomas

222. The University grants doctoral, master's and bachelor's degrees. The diploma awarded to the recipient to attest a degree bears the University's seal and the Rector's and Secretary General's signatures.

223. The University also awards diplômes d'études and certificats d'études signed by the Secretary General.

[Emphasis added.]

[38] Postdoctoral fellows receive from the Université Laval a certificate of participation in research activities as a postdoctoral fellow, but according to the Registrar, this certificate is neither a degree nor a diploma.

[39] According to the information on the Faculty of Graduate Studies website, the Université Laval is 6th out of the 50 Canadian universities in terms of total funding received for research activities (Exhibit I-18). It is also stated that [TRANSLATION] "every year, around 180 postdoctoral fellows, the majority of whom are from abroad, enter this stimulating and innovative environment."

[40] In the same document, the following information regarding official admission and registration for postdoctoral fellows who are not Canadian citizens can be found:

[TRANSLATION]

Postdoctoral fellows who are not Canadian citizens must also present the following documents:

- a. the original work permit issued by Citizenship and Immigration Canada

- b. proof of medical and hospital insurance that is valid in Canada for the entire duration of the postdoctoral training
- c. a **copy of the contract of employment** between you and the Université Laval or an official attestation that a postdoctoral fellowship has been obtained.

[Boldface and underlining added.]

[41] In another document published by the Faculty of Graduate Studies on its website, there is information regarding its training programs (Exhibit I-19). These are the characteristics of its doctoral program as identified in that document:

[TRANSLATION]

Characteristics of the programs

...

At the doctoral level, students must strengthen their abilities to critically interpret data relevant to their specialty, to apply the research principles and methods specific to their field in an independent and original manner, to develop new research or intervention practices, to pursue original research independently, and to present a complex problem both orally and in writing. To this end, the University offers a program leading to a Philosophiæ Doctor (Ph.D.) degree and another leading to a doctoral degree in a field of learning. Exceptionally, the University may create a custom doctorate.

[Emphasis added.]

[42] The document states the following about the doctoral program leading to a Ph.D. degree:

[TRANSLATION]

Doctoral program leading to a *Philosophiæ Doctor (Ph.D.)* degree

This type of program includes some courses, but consists essentially of carrying on an original research project leading to the presentation and defence of a thesis. Unless the University Board grants an exception, the total number of credits for such a program is 90 or 96, at least three-quarters of which are attributed to the research project and at least six to master's or doctoral courses, excluding the credits attributed to the doctoral exam.

[Emphasis added.]

Statement of facts regarding Mr. Chabaud's training

[43] Stéphane Chabaud is French but has acquired Canadian citizenship. In January 2000, he began a doctoral program in molecular biology at the Université de Montréal, and at the end of his studies, obtained his *Philosophiæ Doctor* degree on November 11, 2004 (see Exhibit A-1). To admit him to this doctoral program, the Université de Montréal recognized a diploma Mr. Chabaud obtained in France as being the equivalent of a master's degree.

[44] After obtaining his doctoral degree, Mr. Chabaud worked as an unpaid volunteer at a Université de Montréal laboratory until March 2005, which allowed him to complete for publication one or more articles resulting from his thesis work on molecular biology, more specifically, on cell death. According to Mr. Chabaud, in the life sciences it is typical and usual for Ph.D. holders to work as postdoctoral fellows to round out their knowledge. It is almost impossible to find a position as a professor or laboratory researcher. Moreover, it is preferable to do postdoctoral training in an institution other than the one where the doctoral degree was earned. It is possible to obtain a research grant from an institute such as the Canadian Institutes of Health Research (CIHR), a body corporate incorporated pursuant to the *Canadian Institutes of Health Research Act (Institutes Act)*, S.C. 2000, c. 6, given royal assent on April 13, 2000.¹⁶

¹⁶ The preamble of this Act states in part:

WHEREAS Parliament believes that health research institutes should be created to coordinate, focus and integrate health research based on

an understanding of the multi-factorial nature of health problems and opportunities,

the involvement and recognition of, and respect for health researchers from all research disciplines, and the cooperation of a wide range of partners from all relevant sectors, the provinces and other countries,

the attraction of the best health researchers in Canada and the world and their development and retention in Canada,

the creation of new scientific knowledge based on research that meets the highest international standards of excellence, and

the application of that knowledge to the development and implementation of innovative policy and practice;

(See Tab 13, respondent's Book of Legislation and Jurisprudence, page 2).

[45] According to Mr. Chabaud, only around one hundred people can expect to receive a research grant directly from the CIHR; the vast majority can only hope to benefit from these grants through work at institutions such as LOEX or with research professors associated with these institutions who receive the grants directly. At LOEX there were around 60 people: 8 or 9 researchers, 15 to 20 research assistants, 2 administrative support staff, 20 to 25 master's and doctoral students (2 to 4 per researcher), and 6 postdoctoral fellows, half of whom were from abroad.

[46] One of the LOEX members, Véronique Moulin, Ph.D., is a professor at the Surgery Department of the Faculty of Medicine at the Université Laval. In her testimony, she indicated that she had the title of professor but considered herself more as a research professor. Indeed, she spent the vast majority of her time on research activities and was only occasionally called upon to give lecture courses. She is considered an employee of the Université Laval, with the fringe benefits generally offered to the university's employees. However, she did not have tenure.

[47] Judicial notice is taken of the fact that laboratories such as LOEX operate partially through funding from research institutes, including the CIHR, and that part of these laboratories' work is to continually seek the funding required for their research. Professor Moulin is interested, generally, in the problems of hypertrophic scarring and since 2004 has been more particularly interested in scleroderma. It should be noted that LOEX specializes in tissue engineering. In early 2004, Professor Moulin applied for a grant from the CIHR. Unfortunately, the Court was not provided with the details of the application or the description of the research project or the terms and conditions of the grant. However, in a January 2004 document entitled [TRANSLATION] "Operating Budget Module", the operating budget of \$104,546 is allocated as follows:¹⁷

[TRANSLATION]

1. RESEARCH STAFF AND FELLOWS

A <u>postdoctoral fellow with experience</u> in the understanding of signalling pathways (<u>to be recruited</u>)	\$36,750.00
Ines Boufaied, current master's student, will continue her work	\$17,850.00
A <u>summer student</u> will also be recruited	\$ 5,252.00
Total <u>staff and students</u>	<u>\$ 59,852.00</u>

¹⁷ Page 4 of Exhibit I-11. Some technical details have been omitted.

2. MATERIALS, SUPPLIES AND SERVICES**CONSUMABLES**

* Culture medium		\$20,000.00
* General and plastic reagents		\$7,500.00
* Antibodies for flow cytometry, immunohistology and immunoblotting		\$3,500.00
* Molecular biology		\$1,000.00
* Growth factors and neutralizing antibodies		\$2,500.00
* Dosage kits		\$10,000.00
	Subtotal	\$34,500.00
	Taxes (13.95% - 2.3%)	\$4,019.25
	Delivery and customs charges	\$1,500.00
	Total <u>consumables</u>	<u>\$40,019.25</u>

SERVICES:

* Publications		\$1,500.00
	Subtotal	\$1,500.00
	Taxes (13.95% - 2.3%)	\$174.75
	Total services	<u>\$1,674.75</u>

3. TRAVEL

This amount represents anticipated expenses for the researchers and the student to present their results at international and national conferences.

		\$3,000.00
	Total travel	<u>\$3,000.00</u>
	Total operating budget	<u>\$104,546.00</u>

[Emphasis added.]

[48] It must be noted that the grant was requested on behalf of a principal candidate (Professor Moulin) and an institution (the Saint-Sacrament Hospital in Quebec City, where LOEX is located). (See Exhibit I-11, page 1.) This document indicates that

Professor Moulin will work 15 hours a week on the research project and that the research team that will benefit from the grant will consist of three members, including a student already named in the application, as well as a postdoctoral fellow and a summer student, both of whom are to be recruited (Exhibit I-11, pages 2 and 3).

[49] It should be pointed out that the CIHR define certain standards regarding the remuneration of the researchers recruited by laboratories. In particular, the minimum compensation for a postdoctoral fellow was \$36,750. Similar standards also apply for master's and doctoral students. In general, the money received from the various research institutes, particularly from the CIHR, was deposited to a bank account controlled by the Université Laval and managed by the principal candidate, that is, the researcher whose name appears on the grant application. Université Laval employees handled the disbursement of the amounts owing to the various staff members and then students, including the postdoctoral fellow, and of the amounts to pay for the necessary equipment. The university is accountable to the granting organizations, which can conduct audits regarding the way the money has been spent. However, the spending decisions for the research project are made by the professor in charge of the project.

[50] In July 2005, Professor Moulin advertised on different websites the postdoctoral fellow position she wanted to fill, and she contacted Mr. Chabaud. A letter of offer was sent to him on October 11, 2005 (Exhibit I-2). The three significant paragraphs of this letter are the following:

[TRANSLATION]

Dear Dr. Chabaud:

I hereby confirm that LOEX is offering you a postdoctoral researcher position starting in October 2005. All means, both from an organizational standpoint and in terms of scientific instrumentation, required to carry out your research will be provided.

Your remuneration is guaranteed for a minimum of two years, considering, obviously, your involvement with regard to this position. We ask you, however, to take all necessary steps to obtain a postdoctoral bursary from provincial or national organizations.

I am happy to consider you as one of the postdoctoral fellows at LOEX.

[Emphasis added.]

[51] Mr. Chabaud accepted this offer of a postdoctoral research position. Although the letter refers to steps Mr. Chabaud was to take to obtain a postdoctoral scholarship from provincial or national organizations, these steps were unsuccessful and the only remuneration Mr. Chabaud received was from LOEX.

[52] Lastly, it is interesting to note that Mr. Chabaud filled in forms entitled, [TRANSLATION] "Professional Fees Claim—Research Projects" (addressed to the CHA (Exhibit I-6)) and [TRANSLATION] "Request for Remuneration" (addressed to the Université Laval Financial Services (Exhibit I-5)), in which he asked for the payment of "bursaries"¹⁸ (in the first case) or a "CIHR award, postdoctoral level, annual basis \$36,750.00, ICO Project 87888" (in the second case). Mr. Chabaud was paid every two weeks. According to him, he was not required to produce time sheets, whereas employees would have had this obligation. However, during his testimony, Mr. Chabaud used the term "salary" more than once to describe the compensation he received.

[53] In addition to the agreement on his compensation, according to Mr. Chabaud, there was also the agreement to respect the confidentiality of the research conducted until the publication of an article reporting on the results of the research.

[54] As for the intellectual property in the results of the research, if the research were to lead to an invention protected by a patent, the economic value of those results would be shared, with 50% going to the Université Laval and the remaining 50% to be shared among all the researchers, including postdoctoral fellows and students.

[55] Among the other rules Mr. Chabaud was to follow as a postdoctoral fellow, there were some rules of conduct. In particular, one's conduct was not to be detrimental to the research performed by the other researchers.

[56] On the T4A slips given to Mr. Chabaud after the end of the year, "Université Laval (Human Resources)"¹⁹ is shown as the employer or payor. There was also a

¹⁸ On the form "Professional Fees Claim—Research Projects" it is stated that the word "bursary" means, according to tax legislation, [TRANSLATION] "scholarship or bursary (amount enabling students to continue their studies)" and "fellowships (same as scholarship except payor = university, charitable organization, and student = graduate)".

¹⁹ Exhibit A-4. There is insufficient evidence to clearly establish the relationship between the Université Laval, the CHA and LOEX. I assume that LOEX was a component of the CHA and that the CHA was a component of the Université Laval because it was LOEX that offered the researcher's position to Mr. Chabaud and the Université Laval that issued the T4A for the amounts Mr. Chabaud received for his work at LOEX.

"Tuition, Education, and Textbook Amounts Certificate" (T2202A) issued by the Université Laval. On that form it is indicated that the name of the program or course was [TRANSLATION] "postdoc. fellow training in cellular and molecular bio." (Exhibit I-1). Mr. Chabaud's student number is provided along with the "session periods, part-time and full-time" for 2008, totalling 12 months.

[57] After Mr. Chabaud was recruited by Professor Moulin, certain administrative requirements of the Université Laval had to be met. In particular, an [TRANSLATION] "Admission and Registration in Postdoctoral Training" form had to be submitted to the Registrar's Office. On this form, submitted as Exhibit I-3, the following questions are asked: [TRANSLATION] "Have you obtained a bursary from a granting organization . . .?" to which the answer was no; [TRANSLATION] "Do you have other sources of funding?" to which the answer was yes, and he indicated the grant obtained by professor Véronique Moulin. During her testimony, the registrar of the Université Laval confirmed that, contrary to the situation with admission and registration applications for undergraduate, master's and doctoral students, there were no steps taken or analyses done before the registration was approved, since, as the postdoctoral fellow was invited and recruited by Professor Moulin, registration occurred automatically, with no other steps being taken. This registration was renewed every trimester (see Exhibit I-4). Although Professor Moulin had sent an offer on behalf of LOEX for a [TRANSLATION] "postdoctoral researcher position starting in October 2005" with guaranteed remuneration for a minimum of two years, the postdoctoral registration record was completed for each of the trimesters during which Mr. Chabaud worked as a postdoctoral fellow.²⁰ The Université Laval also issued Mr. Chabaud an ID card that indicates he is a student.²¹

[58] During her testimony, the registrar of the Université Laval indicated that when a student makes an application for admission, the student must indicate the program in which he or she is interested and must pay analysis fees. The student must provide documents such as transcripts and diplomas. A studies management adviser analyzes the documentation. Once the Registrar's Office has completed its analysis, the application is sent to the faculty concerned, which decides whether to accept the student. In the case of a postdoctoral fellow, there is, strictly speaking, no admission application, no admission fee and no formal analysis to determine the candidate's

²⁰ It should also be noted that there is a letter dated March 3, 2011, signed by the registrar of the Université Laval indicating that Mr. Chabaud was registered at the Université Laval as a full-time postdoctoral fellow in cellular biology, from October 3, 2005, to October 1, 2010 (see Exhibit A-2).

²¹ See Exhibit A-5. See also Exhibit A-7.

admissibility because the postdoctoral fellow has already been invited by a professor to fill a research position.

[59] An administrative technician from the Registrar's Office reviews the documentation provided to verify, among other things, whether the documents regarding the candidate's education and training are included and whether the application was filed within five years after obtaining the doctorate. After registration, the Université Laval provides the postdoctoral fellow with an ID card which indicates his or her status as being that of student.

[60] The Université Laval's policy is to employ postdoctoral fellows for only a maximum period of five years after the fellow obtained his or her Ph.D. As for Mr. Chabaud, he was offered the position of project leader in October 2010, more than five years after he had earned his Ph.D. Thus it seems the usual rule was not followed because Mr. Chabaud held a postdoctoral fellow's position until October 2010, more than five years after obtaining his doctorate in November 2004. However, he only held this position for a period of five years after he was hired, since he started working for LOEX in October 2005.

[61] Mr. Chabaud described the way his research activity was conducted. He stated that, first, he had to classify all the documentation available in his field of research. Then, he formulated hypotheses that he had to prove.

[62] Mr. Chabaud described the differences between the work he did as a postdoctoral fellow and the work he did as project leader at LOEX²², where he was still working at the time of the hearing. As a postdoctoral fellow, Mr. Chabaud received compensation of around \$36,700, with no source deductions or employment insurance or pension contributions. As project leader, he had the same fringe benefits as those offered to Université Laval employees, including a pension plan. He was also covered by the employment insurance plan and by Quebec's Commission de la santé et de la sécurité du travail (CSST). As a postdoctoral fellow, he worked a minimum of 50 hours a week whereas, as project leader, he had to work 35 hours a week. If he did any overtime, he could exchange those hours for leave; he generally did not receive additional remuneration. His work as project leader included supervising doctoral students' work. He essentially became the right-hand man of the

²² Mr. Chabaud had prepared a help document describing and comparing the various duties that distinguished the work of master's or doctoral students from that of postdoctoral fellows and that of employees, namely research assistants or project leaders.

researcher in charge of the research project. However, this did not prevent him from continuing to conduct research himself.

[63] As a postdoctoral fellow, Mr. Chabaud believed he could have the last word regarding the direction to be taken by the research project and the way it should be conducted. Mr. Chabaud always managed to convince Professor Moulin to accept the modifications he wanted to make to the execution of the project. When questioned on this, Professor Moulin indicated there was no conflict between them regarding the way to conduct the research, that she always got along with the postdoctoral fellows and the students when they discussed a different orientation for the research. However, when asked whether she ever disagreed, she replied that she would have had the last word. She replied that she would have terminated Mr. Chabaud's training if he had not complied with a directive she gave him. During his testimony, Mr. Chabaud stated that the ultimate goal was to publish and disseminate the knowledge obtained through the research program.

[64] Among the differences between postdoctoral fellows, students and employees, according to Mr. Chabaud, there was the obligation for students and postdoctoral fellows to participate in scientific conferences, whereas employees were not allowed to do so. This was also true for participation in the Faculty of Medicine's science days. Students and postdoctoral fellows were required to attend seminars or reading club meetings and give lectures, whereas employees were required only to attend seminars and not to give presentations at the seminars. There was no obligation for them to participate in the reading club either. According to Mr. Chabaud—and this was confirmed by Professor Moulin—there were no set hours of work for the students and postdoctoral fellows, whereas employees did have a work schedule. During her testimony, Professor Moulin indicated that she allowed students and postdoctoral fellows to conduct their reading and research work outside the laboratory. However, she did need to know where the students and postdoctoral fellows were.

[65] Professor Moulin described as follows the type of training Mr. Chabaud received at LOEX: he learned to better manage students and to draft research grant applications, and he learned project management.

Mr. Chabaud's position

[66] Mr. Chabaud feels that the remuneration he received from Professor Moulin was in the nature of a bursary. He feels that if the CIHR gave Professor Moulin a

grant to pursue scientific research, there was an educational goal when Professor Moulin hired him. This educational objective was similar to the one sought in the case of master's or doctoral students participating in research projects. What we have here is not a salary but rather a scholarship in his opinion. He was considered a student by the Université Laval because he was issued a T2202A, which indicates he is considered a full-time student. He feels he qualifies for the scholarship exemption provided for in paragraph 56(3)(a) of the Act, and submits that he should therefore be treated as master's and doctoral students are.

[67] The article quoted at the beginning of these reasons describes the situation of postdoctoral fellows as follows:

Some of Canada's postdocs are categorized as associates with benefits, others are fellows with no employee status and, until recently, some had a tax-exempt status on a par with students. "We fall into this no-man's land," says Marianne Stanford, chair of the Canadian Association of Postdoctoral Scholars (CAPS) and a postdoctoral fellow at the Ottawa Hospital Research Institute in Ontario.

Earlier this year, the federal government put an end to the tax-free wages that some postdocs had been enjoying since 2006. "Now there's a two-tier system in labs where some of the people earning the degrees are getting more than those who already have them," says Stanford. The move was a blow to postdocs, some of whom were recruited with the promise of tax-free earnings, and who put up with the wages because they were tax-free – although many feel they're underpaid relative to their level of education.

The tax-free wage came about in 2006 when the federal government introduced tax exemption for fellowships and awards. But as the government made clear in March, the exemption was only intended to apply to students enrolled in an educational programme. In a 2009 CAPS survey of 1,200 postdocs, 23% were not paying taxes on their fellowships. Many of those were in Quebec, where the provincial government considers postdocs to be *stagiaires* [*sic*], or trainees, lumping them in with students.²³

[Emphasis added.]

Analysis

[68] Mr. Chabaud contends that he did not have to include the amounts received from the Université Laval for his work with LOEX in his income: he was not subject to tax under the Act because they were bursaries or fellowships that entitled him to

²³ "Taxing Times for Canadian Postdocs", *supra*.

the exemption under subsection 56(3) of the Act. For Mr. Chabaud to benefit from that exemption, the amounts must, under subparagraph 56(1)(n)(i), be included in income as a bursary or fellowship. However, close review of paragraph 56(1)(n) indicates that amounts are not to be included under this paragraph if they are amounts received from employment. As a result, it must first be determined whether the amounts Mr. Chabaud received constitute income from employment. Because the Act has a definition of the word "employment" that does not enable one to clearly ascertain its scope,²⁴ under article 8.1 of the *Interpretation Act*, we must turn to Quebec law to do so. According to the *Civil Code of Québec (C.C.Q. or Civil Code)*, a person is considered an employee if he or she provides work under a contract of employment. Under article 2085 C.C.Q., "[a] contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer." Article 2086 states that "[a] contract of employment is for a fixed term or an indeterminate term." According to the definition of contract for employment, the following three essential elements are required for a contract of employment to exist:

1. a prestation, namely work to be carried out;
2. remuneration;
3. a relationship of subordination.

[69] Were these three essential elements for the existence of a contract of employment present in this case? In my opinion, the most important document for determining the nature of the contractual relationship between Mr. Chabaud and LOEX is the letter submitted as Exhibit I-2, most of which is reproduced above. The relevant parts are the following: "LOEX is offering you a postdoctoral researcher position Your remuneration is guaranteed for a minimum of two years" And it concludes with: "I am happy to consider you as one of the postdoctoral fellows at LOEX."

[70] This letter appears very much to be an offer of employment. In fact, in the letter, LOEX hired Mr. Chabaud as a researcher (as provided for in the operating budget for the grant) to carry out research work for remuneration that, in 2008, was \$36,601. Moreover, Mr. Chabaud used the term "salary" more than once to describe the compensation he received. As the respondent stated in her Reply to the Notice of

²⁴ Employment is defined at subsection 248(1) of the Act as follows: ". . . the position of an individual in the service of some other person (including Her Majesty or a foreign state or sovereign) and "servant" or "employee" means a person holding such a position".

Appeal, the work was to be done under the supervision of Véronique Moulin, a research professor at LOEX (subparagraph 6(d)), and Mr. Chabaud admitted this fact. At first glance, it seems that all the elements required for a contract of employment existed. Although Mr. Chabaud gave a different reply, Professor Moulin confirmed that LOEX had the final word about the way the research would be conducted: LOEX had the right of control and direction over Mr. Chabaud's work. It must also be noted that Mr. Chabaud had to join the team of LOEX researchers. Mr. Chabaud was required to respect certain rules of conduct, including not prejudicing the research conducted by other LOEX researchers. Also, he had to keep confidential the research conducted, until the date of publication of an article reporting on the results of the research.

[71] According to Professor Moulin, the relationship between her and Mr. Chabaud was one of student and professor. I do not share this opinion. A professor does not pay a student when the student "studies". In fact, the opposite is true: it is the student who pays tuition fees! Mr. Chabaud paid none. When a professor hires a student for summer work, this student is in the same situation as all the other students who must earn money to pay for their studies or to support themselves, although the work may be more relevant for his or her future career. If the student receives a salary, it must be included in his or her income tax return (which must be filed if tax is payable). As a result, Mr. Chabaud would not be treated any differently than the summer student mentioned in the operating budget whom Professor Moulin was to hire for her research project at a salary of \$5,252, or than the master's student, who was to receive remuneration of \$17,850 (Exhibit I-11). Therefore, a student can provide services under a contract of employment. In such a situation, the student is an employee.

[72] According to Professor Moulin, the distinction between a project leader and a fellow is that the former does what he or she is told to do while the latter may have greater independence. However, when there is a difference of opinion and the fellow's argument is not accepted, she testified, the fellow's participation in the research project is terminated if he or she does not conform. Even if the fellows are largely independent when it comes to their work schedules, Professor Moulin makes sure she knows where her fellows are. She did, however, admit that she gave fellows with 6 or 7 years' experience more independence than a master's student. Having more independence does not necessarily mean there is no relationship of subordination. The existence of a relationship of subordination does not depend on the right of direction and control being exercised, but on the existence of the right to exercise such control. The best example of this is the considerable autonomy Professor Moulin has, as have the other professors and researchers at the Université Laval. The university still treats her as an employee, and rightly so. It should be noted

as well that the fellow here has a Ph.D. and, during his doctoral studies, he developed his knowledge so as to be able to conduct research and achieve a higher level of autonomy.

[73] In this case, I have no doubt that LOEX had such a right of control and direction over Mr. Chabaud's work. Clearly, the situation might have been different if Mr. Chabaud had obtained his grant directly from the CIHR and had not been subject to any right of control or direction that LOEX, the CHA or the Université Laval could exercise.

[74] Since Mr. Chabaud held the position of researcher with LOEX, it is not surprising to learn that if his research had led to an invention of some sort, the economic value of that outcome would have been shared, with 50% going to the Université Laval and the other 50% being split among all the researchers, including the postdoctoral fellows and the students. In my opinion this situation is entirely compatible with the existence of a contract of employment.

[75] It must also be noted that when Mr. Chabaud asked the Université Laval's Financial Services for payment of his compensation, he used the document entitled "Request for Remuneration". He also submitted to the CHA "Professional Fees Claim—Research Projects" forms for the payment of his compensation. It is true that on these forms, Mr. Chabaud requested the payment of a [TRANSLATION] "CIHR bursary, postdoctoral level" or simply "bursary". However, the case law has consistently held that the terms used by the parties to describe the nature of their contractual relationship or of the payment one of them receives, although relevant, are not determinative. First, the term "bursary" is inconsistent with the terms used in the documents provided to the CIHR describing the way LOEX would use the grant it had applied for. At page 4 of Exhibit I-11, "Operating Budget Module", under "research staff and fellows" the amount to be paid to the postdoctoral fellow is indicated. Moreover, in his own testimony, Mr. Chabaud used the word "salary" to describe the amounts received from LOEX.

[76] Does the term "bursary" used in the requests for remuneration submitted to the Université Laval and the CHA truly correspond to a bursary, scholarship or fellowship referred to in paragraph 56(1)(n) of the Act? The courts have had a number of opportunities to consider the concept of bursary in the context of this paragraph. In her Book of Legislation and Jurisprudence, the respondent presented certain decisions including that rendered by the Federal Court of Appeal in *Simser v. Canada*, 2004 FCA 414, [2006] 1 F.C.R. 253, [2004] F.C.J. No. 2075 (QL). At

paragraph 34 of his reasons, after noting the definition of "bursary" ("*bourse*" in French) in various dictionaries, Nadon J. wrote:

These definitions of the word "bursary" highlight the fact that bursaries are grants given to students in need of financial help so as to allow them to continue their studies.

[Emphasis added.]

At paragraph 45, he adds:

The word "bursary" is not qualified in any way. The wording of paragraph 56(1)(n) leads me to the conclusion that it must receive a liberal interpretation. The words "*bourse d'études*," used in the French version of paragraph 56(1)(n), makes it clear that a "*bourse*" is linked to the status of student. Further, the dictionary definitions which the Judge cited and those that I have added to his list evoke the notion of financial assistance for needy students. This criteria is found in the SOGD, which makes the grant available to needy students who have achieved a minimum standard of success in their studies.

[Emphasis added.]

And at paragraph 49, he adds:

Many of the dictionary definitions of the word "bursary" refer to the notion of financial need when delineating a bursary or grant. This is also what differentiates scholarships from bursaries. The former is often awarded to recognize excellence in the academic field, while the latter is usually awarded to provide financial assistance to a student. Both words are used in paragraph 56(1)(n).

[Emphasis added.]

[77] In *The Queen v. Amyot*, [1977] 1 F.C. 43, [1976] F.C.J. No. 92 (QL), 76 DTC 6217, and [1976] C.T.C. 352, Mahoney J. had occasion to address the concept of fellowship, or in French, "*bourse de perfectionnement*". We will first state the facts. A doctoral student had received \$4,500 from the Canada Council for the Arts to help him obtain his doctorate. Mahoney J. found that this amount was a fellowship.²⁵ Having consulted a number of dictionaries, Mahoney J. found, at paragraph 12 (QL), that the best dictionary definition was from the *Webster's Third New International Dictionary* that defined "fellowship" as:

²⁵ In 1972, the year at issue in *Amyot*, the French version of the Act used the expression "*bourse de recherches*" for "fellowship", whereas starting in 1979 it used the expression "*bourse de perfectionnement*".

a sum of money offered or granted by an educational institution, a public or private agency, or organization, or foundation for advanced study or research or for creative writing.

[Emphasis added.]

[78] While the dictionary recognizes that "fellowship" has a meaning that includes grants for studies and for research, it still had to be determined whether that definition applied for the purposes of the Act. Having noted that research grants were covered by paragraph 56(1)(o), Mahoney J. held that a narrower definition of "fellowship" was to be preferred and that its meaning should be limited to that of a grant made for the purpose of allowing the taxpayer to advance his academic career. In such a case, the grant is in the nature of a bursary, scholarship or fellowship under paragraph 56(1)(n). Mahoney J. held that it was a fellowship because he had accepted the evidence before him that, in the North American academic community, the term "fellowship" designates a bursary granted to students at the doctoral level, whereas the term "bursary" applies to the undergraduate level and "scholarship" to the master's level. At paragraph 16 (QL), Mahoney J. wrote:

. . . the object of the grant was not the defendant's contribution to the general body of knowledge on the Italian Communist Party; it was to assist the defendant toward his doctorate. Having regard to the defendant's level of academic attainment in 1972, the grant was a fellowship and the amounts received by him on its account fell within paragraph 56(1)(n) of the Act.

[Emphasis added.]

[79] What I retain from these pronouncements is that a bursary is an amount granted either as financial aid, or in recognition of the student's excellence. It is not an amount paid as consideration for services rendered. The grantor of the bursary does not grant it in return for a consideration from which the grantor will benefit directly. The grantor does so in the general interest of society.

[80] In this case, the amounts could not have been bursaries for Mr. Chabaud for two reasons. First—and most importantly—the money Mr. Chabaud was paid was for the services he rendered as a researcher, or more specifically, as a postdoctoral research fellow, at LOEX. As a result, the amounts paid cannot be considered financial aid or the recognition of excellence. Second, Mr. Chabaud was no longer a student in 2008. He had already obtained his Ph.D. in 2004. In 2008, Mr. Chabaud worked as a researcher, even though the university gave him student status.

[81] It is important to note that in the letter of offer of employment, LOEX states that Mr. Chabaud's remuneration²⁶ (and not bursary) is guaranteed for a minimum of two years. It must also be noted that the letter makes a distinction between remuneration and a postdoctoral bursary because it is suggested that Mr. Chabaud take all necessary steps to obtain a postdoctoral bursary from provincial or national organizations.

[82] In my opinion, there is no relevant difference between the work Mr. Chabaud did as a postdoctoral research fellow and that of an articling law student, a medical resident, an accounting trainee or an apprentice. All must acquire more experience before moving on to the next stage of their careers. Judicial notice is taken of the fact that medical residents and articling law students must work for a number of months under the supervision of an "attending staff physician" or "articling principal" before being eligible for admission to their respective professional bodies. During this period, they receive remuneration for their work while acquiring more experience in their field.

[83] The concept of *stage* (internship) or *stagiaire* (intern) is not found in the *Civil Code*. However, in practice, an intern is recognized as being a person who must acquire complementary experience in order to be able to exercise a profession such as teacher or researcher. During the internship, a person acquires experience and sometimes even receives training. But receiving training is not reserved solely for interns. Indeed, in any employment a person might have, especially at the beginning of a career, it is normal to have a learning and training period to enable the person to perform the work properly. Moreover, throughout a career, particularly in technical and professional fields, it is common practice for people to be required to keep their knowledge up to date.

[84] The fact that under a contract of employment a person may receive, in addition to remuneration, training provided by his or her employer does not change the nature of the contract of employment. The *Civil Code* does not require that an employee receive only remuneration. The concept of a contract of apprenticeship is also something that does not exist in the *Civil Code*. It is a concept that does seem to exist in common law, however, because reference to such a contract can be found in the *Employment Insurance Act*, at paragraph 5(1)(a).²⁷ Moreover, the Act makes

²⁶ According to the *Petit Robert*, "*rémunération*" means: [TRANSLATION] "money received as payment for a service, for work".

²⁷ That paragraph reads as follows:
5.(1) Subject to subsection (2), insurable employment is

reference to being "employed as an apprentice mechanic" (subsection 8(6)) and to "eligible salary . . . payable . . . to an eligible apprentice" (subsection 127(9) at subparagraph (e.1)(vi) of the definition of "investment tax credit") and also to "salary . . . payable . . . to an eligible apprentice" (subsection 127(9), definition of "eligible salary and wages"). The Act therefore recognizes apprentices as employees when they receive remuneration.

[85] Furthermore, there was no evidence regarding specific training Mr. Chabaud would have received during the year 2008, other than the fact that he may have participated in workshops or conferences.

[86] I must also add that, even if Mr. Chabaud may have received some training in the context of his duties, I believe the most important benefit (aside from money) to him from the performance of those duties was acquiring experience. Moreover, when Professor Moulin described the positive elements Mr. Chabaud's training had brought him, she mentioned the experience gained in drafting grant applications and in project management, including supervising the work of students.

[87] It is also important to note that some internships are paid and others are not.²⁸ In order for a contract of employment to exist, at least in Quebec, there must be

(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;

[Emphasis added.]

²⁸ In a *Presse canadienne* article published on June 25, 2011, at 3:38 p.m., in Cyberpresse and entitled "*Les stages non rémunérés seraient parfois illégaux*" (Unpaid Internships Apparently Sometimes Illegal), the reality of unpaid internships is described as follows:

[TRANSLATION]

More and more, young Canadians who want to get their careers off the ground feel obligated to accept unpaid internships that promise to give them valuable work experience, but rarely lead to a permanent job.

According to experts, unpaid internships replace "bottom-rung" jobs. This trend, they feel, can be explained by the economic recession, which has compelled companies to tighten their belts and forced students to fight for any advantage they can get over their peers.

Labour lawyer Andrew Langille has done research on labour standards and on the case law relating to such internships; his conclusion is that some of these are illegal.

[Emphasis added.]

remuneration. Therefore, a paid intern may be bound by a contract of employment and therefore earn employment income.

[88] It is true that an intern—and this is true in Quebec and elsewhere in Canada—cannot expect to hold a position for an indeterminate period. Generally, an internship is for a fixed period, and does not guarantee the intern a permanent position at the business or department where the internship takes place. This is nonetheless in accordance with the provisions of the *Civil Code*, which states that a contract of employment may be for a fixed term or an indeterminate term. Whether an internship is for a fixed term of one year, six months or five years, there is still a contract of employment. A contract of employment can exist for much shorter periods of time, as is the case for, among others, audio-visual freelancers (see *Bernier v. Canada (Minister of National Revenue)*, 2011 TCC 99, [2011] T.C.J. No. 81 (QL)).

[89] I was not presented with any evidence in Mr. Chabaud's appeal that would allow me to find that the distinction regarding bursaries made in *Amyot* corresponds to reality, namely the distinction based on the academic level of the bursary recipients. However, for the purposes of this appeal, I find without hesitation that a fellowship represents assistance or a grant given to a person to enable that person to acquire new knowledge. In the case at bar, Mr. Chabaud received remuneration for the services he rendered and the amounts he received were not assistance or a subsidy to enable him to acquire new knowledge, nor were they recognition of the excellence of his academic results. Mr. Chabaud obviously acquired new knowledge while carrying out his duties at LOEX, but LOEX's goal in giving him the amounts in question was to remunerate him for the services he rendered to LOEX. Quite clearly, if Mr. Chabaud had received from the provincial or federal government or from a public organization a bursary intended to help him acquire knowledge, with no immediate consideration for the government or the public organization, needless to say, the amount of this bursary could not have been salary or remuneration for services rendered. In my opinion, this is the distinction between the amounts Mr. Chabaud received from LOEX and amounts he could have received from another public organization.

[90] This distinction seems to me to be in accordance with a fair and reasonable interpretation of the provisions of the Act. It is also in accordance with the approach that should guide the courts in interpreting tax legislation, in particular as described by Gonthier J. of the Supreme Court of Canada in *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, at page 17, [1994] S.C.J. No. 78 (QL), at paragraph 22:

In light of this passage there is no longer any doubt that the interpretation of tax legislation should be subject to the ordinary rules of construction. At page 87 of his text *Construction of Statutes* (2nd ed. 1983), Driedger fittingly summarizes the basic principles: ". . . 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". The first consideration should therefore be to determine the purpose of the legislation, whether as a whole or as expressed in a particular provision.

[Emphasis added.]

[91] In my opinion, Mahoney J. applied this rule very appropriately when he noted, in *Amyot, supra*, that the term "fellowship" could include both a grant for study and a research grant. He adopted a narrow interpretation of "fellowship" considering that, at paragraph 56(1)(o), there was already a provision covering research grants.

[92] Similarly, I would add that the terms "scholarship", "bursary", "fellowship" and "research grant" should be given meanings that are consistent with the entire context of the provisions that deal with them. Section 56 and in particular paragraphs 56(1)(n) and (o) are provisions in Subdivision d, which concerns other sources of income and is found in Division B dealing with the computation of income for the purposes of Part I of the Act. Subdivision a includes provisions regarding the calculation of income from an office or employment; Subdivision b includes provisions regarding income from a business or property. It must be presumed that by adding Subdivision d, Parliament wanted to include in income amounts that would not otherwise be included in income under Subdivisions a and b, or under section 3. Examples of this type of income are support payments and social assistance benefits. In my opinion, scholarships and bursaries would not have been included in a taxpayer's income under Subdivisions a and b or under section 3 either. Therefore, if not for its inclusion pursuant to Subdivision d, such a scholarship or bursary would not have been included at all. It is clear that Parliament's intention in taxing scholarships and bursaries in Subdivision d was not to modify the method of calculating employment income. This interpretation becomes even clearer when one considers the amendment to paragraph 56(1)(n) of the Act made following the Supreme Court of Canada decision in *Savage*, in which it was held that the \$300 the employer had paid as a benefit to its employee could be subject to the \$500 exemption provided for in section 56 even if the exemption was not provided for in the calculation of employment income under Subdivision a.

[93] In *Bergeron v. Canada*, [1999] T.C.J. No. 510 (QL), 99 DTC 1265, I defended a similar position regarding the distinction between various sources of income in the

context of the deduction of legal fees incurred to challenge support payments. In *Nadeau v. M.N.R.*, 2003 FCA 400, [2004] 1 F.C.R. 587, 2003 DTC 5736, the Federal Court of Appeal rejected this interpretation. Among the reasons set out by the court was the fact that the interpretation to which I was opposed had been applied for more than 40 years and that subsequent amendments to the Act had sanctioned this interpretation. It was from this perspective that Noël J.A. stated, "[w]ere it not for this well-established jurisprudence, the thesis developed by Archambault T.C.J. would be quite tenable" (paragraph 29). For the type of situation involved in the present case, contrary to what it did regarding the treatment of legal fees incurred to obtain support payments, Parliament took action to counter the Supreme Court's interpretation in *Savage*. By adding the text in parenthesis found in paragraph 56(1)(n), Parliament ensured that the treatment provided for in the provisions regarding the calculation of income from employment or from a business or property takes precedence over the treatment provided for at paragraph 56(1)(n). Since this amendment was adopted, it has been clear that scholarships and bursaries paid by an employer to its employee are entirely taxable whereas scholarships and bursaries received from someone other than an employer (or a person not operating a business) could be subject to a partial or total tax exemption.

[94] It should also be noted that Mr. Chabaud's remuneration, although likely inadequate considering the number of diplomas he holds and the significant number of his years of education, is higher than that of certain teachers at the elementary level. There could be tax inequities in such circumstances if one had to pay taxes and the other did not. A clear provision in the Act would be required in order for Mr. Chabaud to benefit from a tax exemption.

[95] Postdoctoral fellows have the right, as have all other Canadians, to arrange things so that they pay the least taxes possible. Universities have the right to help them achieve this end, especially if it allows them to attract excellent young researchers without having to pay the remuneration that would otherwise be justified for holders of doctorates and without having to provide certain benefits required by law (in particular participation in the employment insurance plan). However, the mere fact that a university decides to treat a postdoctoral fellow as a student does not mean that the fellow is a student and not an employee. This determination is to be made by the courts, taking into consideration the facts and, in particular, the parties' behaviour.

[96] It goes without saying that the reasoning adopted above in finding that the amounts paid to Mr. Chabaud cannot be bursaries also applies to research grants under paragraph 56(1)(o) of the Act. The concept of grant has also been the subject

of case law commentary, in particular in the Federal Court of Appeal decision in *Ghali v. Canada*, [2004] FCA 60, [2004] F.C.J. No. 265 (QL), 2005 DTC 5472, [2005] 4 C.T.C. 177. Nadon J.A. wrote the following at paragraphs 33, 34 and 37:

33 The word "grant" is not defined. Since it is not a term of art, it must be given its ordinary meaning. The dictionary *Le Petit Robert* defines "subvention" ("grant") as follows: "[TRANSLATION] A subsidy asked for or required by the government to meet an unexpected expense (loan, tax). Assistance granted to a group, a person, by the government or an association (public or private)." The dictionary *Le Petit Larousse* defines "subvention" as follows: "[TRANSLATION] Financial aid paid by the government or a public entity to a private person with the aim of promoting an activity of general interest in which that person is engaged." Finally, the *Termium Plus* electronic terminology bank cites the following definition of "subvention": "[TRANSLATION] An amount paid occasionally or regularly to an individual or a group as assistance, aid or a subvention in payment for certain services, etc."

34 Clearly, the word "grant" is very broadly defined. It includes any form of financial assistance paid to a person by a public agency in order to achieve an objective of public interest. That was the interpretation arrived at by Mr. Justice Cattanach, in the context of paragraph 20(6)(h) of the Act, in *G.T.E. Sylvania Canada Ltd. v. The Queen*, (1974) 74 DTC 6315 (F.C.). After reviewing a series of definitions contained in English dictionaries, which were similar to those I reproduced above, Cattanach J. stated, at page 6320:

Again referring to the dictionary meanings of the words "grant" and "subsidy" there is one common thread throughout, that is a gift or assignment of money by government or public authority out of public funds to a private or individual or commercial enterprise deemed to be beneficial to the public interest. Subject to minor refinements the words "grant" and "subsidy" appear from their dictionary meanings to be almost synonymous.

...

As I have said before the constant and dominating feature in the words "grant" and "subsidy" is that each contemplates the gift of money from a fund by government to a person for the public weal. Something concrete and tangible is to be bestowed ...

37 Accordingly, I think, with respect, that the learned judge erred in concluding as he did. The dictionary definitions and the cases clearly indicate that a "grant" consists of financial assistance paid by an agency to a person or a group. In this case, therefore, the funds received by the appellant may without any difficulty be characterized as a "grant".

[Emphasis added.]

[97] It is clear that the amounts LOEX paid to Mr. Chabaud do not constitute financial aid in the nature of a gift, to use the term of Cattnach J. in *G.T.E. Sylvania Canada Ltd.* When a person is paid a salary, the salary is not financial aid, but consideration for services rendered by that person. Here, the amount of \$104,546 was paid by a public organization (CIHR) to LOEX (a component of the Université Laval) for the achievement of an objective of public interest, namely, assisting in health research. It is therefore clear that this amount represented a research grant for LOEX. However, when LOEX uses such an amount to compensate employees it hires and to acquire material, supplies and services as described in its operating budget referred to above, this amount loses its grant status and becomes, for the providers of those services, supplies and material, consideration for the services rendered or the goods sold. When LOEX purchases \$10,000 worth of dosage kits, the amount paid by LOEX or the Université Laval constitutes the purchase price for these dosage kits. It is the same for the employees LOEX recruited and hired. The amounts paid to the employees constitute salaries, namely, consideration for services rendered by these employees in the laboratory.

[98] Nothing in the evidence shows that LOEX or the Université Laval acted as agents for the CIHR or that they were mandated to pay scholarships, bursaries or research grants to other people. On the contrary, the evidence before me showed that the amounts paid by the CIHR were intended to be used to pay the salaries of the research staff (including the postdoctoral fellow), to purchase materials, supplies and services, and to pay travel costs (see operating budget reproduced above).

[99] Counsel for the respondent asked the Court to be allowed to provide written submissions regarding the existence of a contract of employment. Since this issue was not raised in the pleadings, I granted the parties all the time required to adequately address the issue. Counsel for the respondent sent me her written submissions on June 22, 2011, and Mr. Chabaud's are dated July 29, 2011. Mr. Chabaud expressed no disagreement with the respondent's position on the existence of a contract of employment.²⁹ I reproduce hereunder the following excerpt from counsel's letter:

²⁹ He repeated arguments already presented during his oral argument, some of which have been set out above. Moreover, he presented new facts to contradict Mr. Goutier's testimony, which facts I cannot consider since the evidence is closed as to the facts and he has only been permitted to make additional submissions regarding the issue of the contract of employment.

[TRANSLATION]

(1) INTENT OF THE PARTIES TO THE CONTRACT

In 2005, Ms. Moulin, professor at the Université Laval and researcher at the Experimental Organogenesis Lab of the St-Sacrement Hospital (LOEX), submitted a research grant application to the Canadian Institutes of Health Research (CIHR) (Exhibit I-11). In this document, Ms. Moulin indicated an amount of remuneration for a postdoctoral fellow, as opposed to a salary to be paid to research staff.

The amount of the remuneration for the postdoctoral fellow was not decided by Ms. Moulin but was predetermined by the CIHR.

After she obtained the research grant, Ms. Moulin recruited the appellant to participate in her research work as a postdoctoral trainee (Exhibit I-2). It was agreed at that time that the appellant would conduct his own research project and that the results would be published. Obviously, the appellant's research project had to be compatible with the project for which a research grant was awarded by the CIHR.

It was stipulated that remuneration would be paid to the appellant with no regard to the number of hours worked. It was also stipulated that he would not have any fringe benefits such as a pension plan or insurance. Moreover, his work would not be covered by the CSST.

It was agreed that the appellant would participate in conferences, science days, seminars, etc., in order for him to round out his knowledge, acquire experience as a lecturer and establish contacts.

Ms. Moulin's goal was to offer holders of doctorates the opportunity to participate in postdoctoral training. She wanted to contribute to the learning of young researchers while having the possibility of benefiting from the results of their research.

The appellant's main objective in doing the postdoctoral training was to increase the number scientific publications he had to his credit. He also wanted to improve himself as a researcher in order to be better equipped to eventually obtain a research position in his field of research.

The appellant and Ms. Moulin indicated to the Court that they did not enter into a contract of employment and distinguished their relationship from that between Ms. Moulin and/or LOEX and the research assistants, who were considered employees. They enjoyed all the fringe benefits offered to the Université Laval's employees. They had a set schedule and were remunerated for their overtime. They were also subordinate to their employer.

Thus, in this particular case, we are of the opinion that the relationship between the parties to the contract was not one of employer-employee.

(2) FACTUAL REALITY OF THE RELATIONSHIP BETWEEN THE PARTIES TO THE CONTRACT

The parties' behaviour in executing the contract is consistent with their common intent to not enter into a contract of employment.

The appellant's remuneration was paid with no regard to the number of hours worked. No record of time worked was kept and Ms. Moulin had no idea how many hours the appellant spent on his research. Ms. Moulin wanted to be informed of days off, but this was also the case for all students and fellows who worked on her research projects, and it seems to us that it was a very informal arrangement, with no real relationship of subordination.

Ms. Moulin did not have any direct control over the execution of the appellant's research. It was not a relationship of employer to employee, but rather a relationship of guide, advisor or mentor to fellow.

Neither the place where the appellant conducted his research at LOEX nor any of the furniture was Ms. Moulin's property, and the research grant the CIHR awarded to Ms. Moulin paid the expenses for material and supplies, and publication costs (Exhibit I-11).

As a result of all the above, we therefore find that the analysis of the facts submitted in evidence, in light of article 2085 of the *Civil Code of Québec*, 1991, c. 64, and the decisions *Grimard v. Canada* (2009 FCA 47) and *NCJ Educational Services Ltd. v. Canada* (2009 FCA 131), do not lead to the conclusion that there was a contract of employment.

[Emphasis added.]

[100] I would like to make a few comments on some of the arguments presented by counsel for the respondent. First, the fact that the amount of the remuneration for the postdoctoral fellow was not determined by Professor Moulin but was predetermined by the CIHR has no relevance, in my opinion. The CIHR could set certain standards of employee remuneration as conditions for the grant,³⁰ but this has no impact on whether a contract of employment existed between LOEX and Mr. Chabaud. Quebec's *Act respecting Labour Standards* imposes certain labour standards on employers in Quebec, but this does not prevent the existence of a contract of employment.

[101] Even though, in the letter of offer of employment, LOEX indicated that Mr. Chabaud could conduct his research, I do not doubt that the research project was

³⁰ I would like to note that no specific evidence of the conditions of the awarding of the grant by the CIHR was submitted.

LOEX's and not Mr. Chabaud's. He was not free to choose any research project; he had to become integrated into the LOEX research team and, quite obviously, through his own research work, he was to contribute to the progress of the project funded by the CIHR. Professor Moulin clearly stated, moreover, that if Mr. Chabaud's research had taken a direction that did not conform to LOEX's objectives, she would have terminated his contract of employment.

[102] Counsel for the respondent wrote that the remuneration was paid "with no regard to the number of hours worked." It must be noted that Mr. Chabaud was paid every two weeks and that to obtain payment of his remuneration he had to submit the forms provided by the Université Laval and the CHA. The fact there was no strict control over the number of hours worked and the fact Mr. Chabaud could even work at home do not mean a contract of employment could not exist. The remuneration paid to Mr. Chabaud was based on an annual salary, payable every two weeks. It is quite obvious that if Mr. Chabaud had not provided his services, his contract would have been terminated. Moreover, the fact that Mr. Chabaud could enjoy no fringe benefits such as a pension plan or insurance, and the fact that he was not covered by the CSST are not determining factors as to whether a contract of employment existed. As I mentioned above, the fact of being able to contribute to the learning of young researchers does not prevent the existence of contract of employment. This type of situation exists in many cases where there is a contract of employment, whether it involves articling law students, medical residents or apprentices.

[103] That postdoctoral fellows may have worked more hours than regular researchers at LOEX is amply justified by the fact that the fellows were allowed to participate in conferences, science days, and seminars in order to round out their knowledge. Moreover, it is common to spend more time on one's work when one is learning to work. Every year, the Court hires law clerks for one-year terms to assist judges with legal research. The clerks are also given training and they are allowed to participate in conferences. These clerks have with the Court a contract of employment. They are required to declare the remuneration paid by the Court as employment income.

[104] Counsel for the respondent states that Mr. Chabaud's main goal was to increase the number of scientific publications he had to his credit. He also wanted to improve himself as a researcher in order to be better equipped to obtain a position as researcher in his field of research. This corresponds to the usual goal of any internship. However, when the internship is paid, and the intern provides his or her services to the payor, there is a contract of employment. I also note that certain university professors are required to publish or encouraged to produce a certain

number of publications. There is therefore nothing in particular that could justify a finding that no contract of employment existed between a postdoctoral fellow and LOEX.

[105] Moreover, even if the evidence had clearly shown that LOEX and Mr. Chabaud's intention was to not enter into a contract of employment, but rather to create a relationship in which Mr. Chabaud would receive the advice of a mentor or would benefit from learning opportunities, this would not necessarily mean there was no contract of employment within the meaning of the *Civil Code* as long as all the required conditions were met, namely, the provision of services for remuneration under the direction or control of the payor (employer). I do not doubt that, here, Mr. Chabaud worked as a member of the LOEX staff, albeit as a postdoctoral fellow, I admit. He was subject to the direction and control of LOEX. Moreover, Professor Moulin stated that although the postdoctoral fellows had considerable autonomy, she wanted to know where they were during working hours, and if there were differences of opinion regarding the execution of the work, she had the last word.

[106] Obviously, the fact that the Université Laval issued an ID card indicating Mr. Chabaud was a student is certainly not a determining factor as to the nature of the contractual relationship between him and LOEX. It is rather odd that the Université Laval considered postdoctoral fellows as students when the MEQ does not. I would also add that on its website and in the information provided to postdoctoral fellowship candidates from abroad, the Université Laval asks foreign candidates to provide a work permit and a copy of the contract of employment, and not a permit to study in Canada.

[107] I fully understand that the Université Laval wanted to help Mr. Chabaud obtain his tax exemption by giving him T2202A information forms indicating that the university considered him to be a full-time student there. However, this was not justified because he was an employee of LOEX and not a student.

[108] It should be added that postdoctoral fellows are considered to be neither full-time nor part-time students under the university's internal management rules, since they are not registered in a program that would lead to credits. It bears repeating that a full-time student is one registered in learning activities that are worth 12 credits or more per session, and a part-time student is one registered in learning activities worth fewer than 12 credits per session (see article 187 of the Student Regulations of the Université Laval).

[109] In my opinion, the Report on Postdoctoral Fellows prepared for the MEQ, describing postdoctoral training as an activity enabling the fellow to develop "expertise" in research in a complementary or more specialized field, and according to which postdoctoral fellows must be considered employees, seems much closer to reality than the T2202A issued to postdoctoral fellows by the Université Laval and other Canadian universities. It is possible that the decision rendered by Lamarre Proulx J. of this Court in *Bekhor v. Canada (Minister of National Revenue)*, 2005 TCC 443, [2005] T.C.J No. 314 (QL), encouraged them to find that postdoctoral fellows were not employees. Considering the numerous similarities between Mr. Chabaud's fellowship and that of Mr. Bekhor, I do not think it is appropriate to make any factual distinctions in order to come to a different conclusion than that in *Bekhor*.³¹ With great respect for those who hold the opposite view, I cannot adopt here the same reasoning as that adopted in *Bekhor*. It is unfortunate that Mr. Bekhor did not see fit to appeal to the Federal Court of Appeal so that it could rule on this issue. In keeping with the opinion I have just expressed, I encourage Mr. Chabaud to do this in order to obtain a decision that will create a judicial precedent, which my decision cannot be.

³¹ A factual distinction might have been that the University of Alberta had offered Mr. Bekhor a "post-doctoral fellowship" for a minimum period of two years and not a guaranteed "remuneration" for a minimum of two years.

[110] For all these reasons Mr. Chabaud's appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 20th day of September 2011.

"Pierre Archambault"

Archambault J.

Translation certified true
on this 26th day of January 2012.

Erich Klein, Revisor

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THE QUEEN

PLACE OF HEARING: Quebec City, Quebec

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REASONS FOR JUDGMENT BY: The Honourable Justice Pierre Archambault

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