Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2002-012

Quay Developments Ltd.

v.

Minister of National Revenue

Decision and reasons issued
Wednesday, December 21, 2005

Corrigendum issued
Tuesday, January 3, 2006

Canada

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IN THE MATTER OF an appeal heard on July 14, 2005, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated February 15, 2002, pursuant to subsection 121(3) of the *Excise Tax Act*.

BETWEEN

QUAY DEVELOPMENTS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Patricia M. Close
Patricia M. Close
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Vancouver, British Columbia
Date of Hearing:	July 14, 2005
Tribunal Members:	Patricia M. Close, Presiding Member Zdenek Kvarda, Member Ellen Fry, Member
Counsel for the Tribunal:	Roger Nassrallah
Clerk of the Tribunal:	Valérie Cannavino
Appearances:	Ian Worland, for the appellant Suzanne Pereira, for the respondent

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STATEMENT OF REASONS

1. This is an appeal under section 81.19 of the *Excise Tax Act*[1] from a decision of the Minister of National Revenue (the Minister). The issue in this appeal is whether Quay Developments Ltd. (Quay) is entitled to receive a federal sales tax new housing rebate under paragraph 121(3)(*b*), which provides the following:

> (3) Where, immediately before 1991, a builder of a specified residential complex (other than a builder of the complex to whom, because of subsection 191(5) or (6), subsections 191(1) to (4) do not apply) owned or had possession of the complex and had not transferred ownership or possession under an agreement of purchase and sale to any person who is not a builder of the complex, the Minister shall, subject to subsections (4) and (4.1), pay a rebate to the builder equal to
>
> . . .
>
> (*b*) where the complex is a residential condominium unit in a condominium complex,
> (i) 50% of the estimated federal sales tax for the unit, where the construction or substantial renovation of the condominium complex was, on January 1, 1991, more than 25% completed and not more than 50% completed, and
> (ii) 75% of the estimated federal sales tax for the unit, where the construction or substantial renovation of the condominium complex was, on January 1, 1991, more than 50% completed.
>
> (3) Sous réserve des paragraphes (4) et (4.1), le ministre rembourse au constructeur d'un immeuble d'habitation déterminé (sauf le constructeur auquel les paragraphes 191(1) à (4) ne s'appliquent pas par l'effet des paragraphes 191(5) ou (6)) qui, immédiatement avant 1991, a la propriété ou la possession de l'immeuble et qui n'en a pas transféré la propriété ou la possession aux termes d'un contrat de vente à une personne qui n'est pas le constructeur de l'immeuble. Le montant remboursable est égal au suivant :
>
> […]
>
> *b*) s'il s'agit d'un logement en copropriété situé dans un immeuble d'habitation en copropriété :
> (i) 50 % de la taxe de vente fédérale estimative applicable au logement, si la construction ou les rénovations majeures de l'immeuble étaient, le 1er janvier 1991, achevées à plus de 25 % mais non à plus de 50 %,
> (ii) 75 % de la taxe de vente fédérale estimative applicable au logement, si la construction ou les rénovations majeures de l'immeuble étaient, le 1er janvier 1991, achevées à plus de 50 %.

2. Quay applied for and received a rebate under paragraph 121(3)(*b*) of the *Act* for the first phase of its Renaissance Development, the Lido. This appeal deals with the application for a rebate for the second phase of the Renaissance Development, the Rialto. Quay is requesting a rebate for the entire development (i.e. both the Lido and the Rialto), assessed as a single "condominium complex" under subparagraph 121(3)(*b*)(ii), for the difference between the rebate granted for the Lido, on its own, and the rebate that it claims that it ought to receive for the Lido and the Rialto, assessed together. In the alternative, Quay is requesting a rebate for the Rialto alone under subparagraph 121(3)(*b*)(i).

3. The Tribunal held a hearing in Vancouver, British Columbia, on July 14, 2005. Both sides were represented by counsel. Quay called one witness, Mr. Andre Molnar, to testify.

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1. R.S.C. 1985, c. E-15 [*Act*].

EVIDENCE

4. Mr. Molnar testified that he was the developer of the Renaissance Development, which consisted of the Lido and the Rialto, and that he had much experience in multi-unit residential developments. He indicated that he began the Renaissance Development in the late 1980s and that Quay was incorporated to purchase the land from Western Forest Products Limited.

5. Mr. Molnar indicated that the Renaissance Development was supposed to be the first phase of the New Westminster Quay Development, with further phases to be developed in the future. He indicated that the land initially had to be rezoned from "light-industrial" to "multi-unit residential". He also indicated that, prior to being granted approval for the rezoning, he had to meet certain conditions, which included the construction of a bridge over existing rail lines, the construction of a waterfront promenade located in front of the development and the revitalization of the "underwater life" to make it fish-friendly.[2] He also indicated that the bridge and promenade had to be finished before an occupancy permit was issued for either phase of the Renaissance Development.

6. Mr. Molnar testified that, in addition to the construction of the bridge and the promenade and the revitalization of the water environment, other common costs were incurred for the Renaissance Development, including those associated with demolition and excavation, the compaction of the land, sheet piling,[3] the installation of the water, sewer and gas services, the construction of the roads and culs-de-sac, and the addition of the lagoon located between the Lido and the Rialto.[4] Mr. Molnar indicated that Quay had a separate site-servicing loan of $7.51 [5] for these costs, which was in addition to the actual construction budget.

7. Mr. Molnar indicated that Quay started compaction of the site in 1988, began the actual construction in 1989-90, completed the Lido (148 units) in 1990 and began the Rialto (109 units) while the Lido was still under construction.

8. With respect to the financing of the project, Mr. Molnar indicated that the Renaissance Development was initially financed in its entirety through Financial Trust, which was replaced by Central Guaranty Trust Company (Central Guaranty) after Financial Trust went bankrupt. As a result of the transfer to Central Guaranty in 1990, he indicated that, due to its conservative nature, it only agreed to finance the construction of the Lido initially and the Rialto subsequently. Under cross-examination, he indicated that another aspect of the transfer included the splitting of the Lido and the Rialto onto two separate strata lot plans. He also indicated that the bankruptcy of Financial Trust caused a slight delay in the construction of the entire project.

9. Mr. Molnar testified that Central Guaranty had procured the services of Butterfield Development Consultants Ltd. (Butterfield), which, he indicated, was a sophisticated quantity surveying firm that performed verifications for financial institutions to determine whether the construction merited the amount of money lent every month. He provided testimony in respect of the Butterfield letter dated December 7, 1990,

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2. Mr. Molnar testified that the construction of the bridge cost $3.2 million and that the promenade cost $1 million, for a total of $4.2 million.
3. Mr. Molnar indicated that sheet piling was needed because of the closeness of the waterfront to the development to prevent the water from breaking through the very thin barrier between the two.
4. Mr. Molnar testified that the lagoon was a common element between the Lido and the Rialto and that it was built for the benefit of both projects.
5. Tribunal Exhibit AP-2002-012-17A (letter dated November 20, 1990).

regarding the Rialto. In this regard, he testified that the letter indicated that, in terms of progress on the Rialto, the following work had been completed:

> Concrete work to foundations, columns, basement perimeter walls and interior walls complete. Perimeter drain tile is in place. Underslab drainage is substantially complete. Sewer and water lines still have to be run into the building.[6]

10. Mr. Molnar also indicated that the enclosures with the Butterfield letter indicated the following: the original budget for the Rialto was $17.60 million; at that point in time, the "total work in place" was $6.19 million; the cost for the land was $4.45 million; and the cost for demolition and excavation was budgeted at $212,000 and $206,288 of this work had been completed. He emphasized that the budget found in the Butterfield letter was the construction budget for the Rialto and that there was a separate budget for the site servicing costs (e.g. bridge, promenade, water, sewer, gas and electricity services and roads).

11. With respect to a calculation provided in Quay's record for purposes of its alternative argument, Mr. Molnar explained that it consisted of the revised percentage of completion for the Rialto.[7] He indicated that this revised percentage of 29.6 percent did not include the cost for the land. In his testimony, he explained his calculation[8] of the percentage of completion as follows:

Revised Percentage of Completion for the Rialto **Calculation of *Numerator***		
Calculation of Amount Billed, not Including the Land and Demolition and Excavation Costs **(1st step in calculating adjusted numerator)**	Total Amount Billed for the Rialto Before 1991 (Source: Butterfield letter dated December 7, 1990)	$6,192,890
	Minus: Land Costs Demolition and Excavation Costs (Source: Butterfield letter dated December 7, 1990)	(4,454,000) (206,288)
	Balance of Total Amount Billed for the Rialto Before Adding the Site Servicing Costs	$1,532,602
Calculation of Amount of Site Servicing Costs That Should be Attributed to the Rialto **(2nd step in calculating adjusted numerator)**	Total Site Servicing Budget (Source: Letter dated November 20, 1990)	$7,510,544
	Percent of Site Servicing Budget Attributable to Rialto (109 units [Rialto] divided by 257 units [Rialto + Lido])	0.42
	Amount of Site Servicing Budget That Should be Attributed to the Rialto	$3,185,406
Calculation of Total Construction Costs for the Rialto up to December 7, 1990 **(Adjusted numerator)**	Balance of Total Amount Billed for the Rialto Before Adding the Site Servicing Costs	$1,532,602
	Amount of Site Servicing Budget That Should be Attributed to the Rialto	$3,185,406
	Total Construction Costs for the Rialto as of December 7, 1990	$4,718,008

6. Tribunal Exhibit AP-2002-012-17A.
7. Tribunal Exhibit AP-2002-012-17A.
8. Tribunal Exhibit AP-2002-012-17A.

Revised Percentage of Completion for the Rialto **Calculation of *Denominator***		
Calculation of Total Budget, not Including Land and Demolition Costs **(Proper Denominator)**	Total Budget for the Rialto (Source: Butterfield letter dated December 7, 1990)	$17,598,624
	Minus: Land Costs	(4,454,000)
	Demolition and Excavation Costs (Source: Butterfield letter dated December 7, 1990)	(206,288)
	Plus: Site Servicing Cost (Rialto only)	$3,185,406
	Total Adjusted Budget for the Rialto	$16,123,742

Revised Percentage of Completion for the Rialto **Calculation of Percentage of Completion Using Adjusted Numerator and Denominator**		
Adjusted Numerator	Total Construction Costs for the Rialto as of December 7, 1990	$4,718,008
Adjusted Denominator	Total Adjusted Budget for the Rialto	$16,123,742
Adjusted Percentage of Completion		29.26

12. Based on the above calculation, Mr. Molnar testified that the percentage of completion for the Rialto on the basis of this calculation was 29.26 percent.

13. Under cross-examination, Mr. Molnar indicated that, as of December 31, 1990, the Lido and the Rialto were under separate strata lot plans. He explained that Quay had originally had both buildings under one strata lot plan, but that, when Central Guaranty took over, it insisted on splitting the strata lot plan in two.

14. In reply to questions from the Tribunal, Mr. Molnar testified that the Rialto and the Lido shared a common basement, which is used for parking purposes, and that they also shared the lagoon that ran between them and the common waterfront.

ARGUMENT

Quay

15. Quay argued that the Lido and the Rialto should be seen as a single development and that the calculation of the percentage of completion should be done on the basis of the whole development for purposes of the rebate. Under this line of argument, Quay argued that the Lido and the Rialto, together, should be considered a "condominium complex" for the purposes of the *Act*. In this regard, Quay noted that the following terms and their definitions, found under subsection 123(1), are relevant to the rebate analysis:

. . .	[...]
"condominium complex" means a residential complex that contains more than one	«immeuble d'habitation en copropriété» Immeuble d'habitation qui contient au moins

residential condominium unit;

. . .

"residential complex" means
(*a*) that part of a building in which one or more residential units are located, together with
(i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and
(ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,

. . .

"residential unit" means
(*a*) a … condominium unit, . . .

or that part thereof that

. . .

(*g*) has never been used or occupied for any purpose, but is intended to be used as a place of residence or lodging for individuals;

. . .

deux logements en copropriété.

[…]

«immeuble d'habitation»
a) La partie constitutive d'un bâtiment qui comporte au moins une habitation, y compris :
(i) la fraction des parties communes et des dépendances et du fonds contigu au bâtiment qui est raisonnablement nécessaire à l'usage résidentiel du bâtiment,
(ii) la proportion du fonds sous-jacent au bâtiment correspondant au rapport entre cette partie constitutive et l'ensemble du bâtiment;

[…]

« habitation » […] unité en copropriété, […] ou toute partie […] qui est, selon le cas :

[…]

d) destinée à servir à titre résidentiel ou d'hébergement sans avoir servi à une fin quelconque.

[…]

16. With respect to the interpretation of the above phrases, Quay asked the Tribunal to consider subsection 33(2) of the *Interpretation Act*,[9] which provides that "[w]ords in the singular include the plural, and words in the plural include the singular." It also submitted that this provision applies to all federal statutes, which include the *Act*, by virtue of subsection 3(1) of the *Interpretation Act*.[10]

17. In light of this provision of the *Interpretation Act*, Quay submitted that the terms in the singular in the *Act* have to be read in the plural, unless a contrary intention appears. Specifically, it argued that the term "building", found in the string of definitions for "condominium complex", should be interpreted as "buildings". Under this interpretation, it argued that the entire Renaissance Development, which includes both the Lido and the Rialto, would be considered a single "condominium complex".

18. As support for this argument, Quay submitted that there is nothing in the *Act* that indicates that there is a contrary intention that the word "building" should not be read in the plural. Furthermore, it submitted that the ordinary meaning of the term "complex" would be a"cluster of buildings".

9. R.S.C. 1985, c. I-21.
10. Subsection 3(1) of the *Interpretation Act* states the following:
3.(1) Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

19. Quay also argued that the Tribunal has essentially considered the "identical situation" in the case of *Cragg & Cragg Design Group Ltd. v. M.N.R.*[11] It noted that, in *Cragg & Cragg*, the Tribunal held that, on a proper interpretation of the legislation, the rebate was payable in respect of the whole development. Quay submitted that the facts of the current matter were "almost indistinguishable" from those in *Cragg & Cragg*. However, it did concede that one difference was that, in *Cragg & Cragg*, only one strata lot plan was registered, whereas, in the current matter, the buildings are under two separate strata lot plans.

20. Specifically with respect to the strata lot plan issue, Quay argued that it does not dispute that the Lido and the Rialto were on two strata lot plans as of December 31, 1990. However, it did emphasize that the original business plan was created under a single strata lot plan and that Quay's original intention was to have it under one strata lot plan.

21. Quay argued that, on the basis of the above argument, the Lido and the Rialto were 61.96 percent complete as of December 31, 1990, when assessed as a single development and that the Tribunal should find that Quay is entitled, pursuant to subparagraph 121(3)(*b*)(ii) of the *Act*, to a rebate equal to 75 percent of the federal sales tax in relation to the Renaissance Development, over and above the rebate that was granted for the Lido.

22. In the alternative, Quay argued that the Tribunal should assess the percentage of completion on the Rialto, on its own, and should determine that more than 25 percent of the development was complete as of December 31, 1990. Under this line of argument, it conceded that it changed its argument slightly from that in its brief, in that the cost of the land value had been deducted for the computation of the percentage of completion. In this regard, it deducted the land and the demolition and excavation costs from the calculation and included those site servicing costs attributable to the Rialto. It submitted that these inclusions and deductions are consistent with the policy interpretation entitled "P-087—Percentage of Completion for FST Housing Rebates".[12] Using this rationale, it submitted that 29.26 percent of the Rialto had been completed by the end of December 31, 1990, and that, since this portion was greater than the 25-percent threshold, it was entitled to a rebate, pursuant to subparagraph 121(3)(*b*)(ii) of the *Act*, equal to 50 percent of the federal sales tax in relation to the Rialto.

23. In reply to a question from the Tribunal as to whether the fact that the Rialto and the Lido shared a common basement impacted its argument, Quay submitted that, under its interpretation, it does not matter whether the Tribunal considers the Renaissance Development as one or more buildings because Quay's submission, which relies on subsection 33(2) of the *Interpretation Act*, permits the Tribunal to find that the Renaissance Development consisted of two buildings and still fell within the string of definitions of "condominium complex".

24. In reply to the interpretation provided by the Minister for the definition of "residential condominium unit", Quay argued that the Minister was attempting to read in the term "single" *vis-à-vis* "single" building and "single" strata lot plan, but that the term "single" is not part of the language of the legislation.

25. In reply to the Minister's argument that the decision[13] of the Tax Court of Canada (Tax Court) means that the *Interpretation Act* should not be triggered, Quay criticized the position that this decision has precedential importance. It first noted that the Tax Court is not a court of inherent jurisdiction and, thus, is essentially a tribunal, similar to the Tribunal. Furthermore, it argued that the case itself was conducted under

11. (15 August 1994), AP-93-264 (CITT) [*Cragg & Cragg*].
12. Department of National Revenue, effective date January 1, 1991.
13. *327119 B.C. Ltd. v. Canada* (3 December 1996), T.C.J. No. 1602 (T.C.C.) [*B.C. Ltd.*].

an "informal procedure", which, by virtue of section 18.28 of the *Tax Court of Canada Act*,[14] has no precedential value. It also noted that the "I" found in the court file number indicated that it was conducted under this informal procedure. In light of this argument, Quay submitted that the Tribunal should follow its own previous decision and not a previous decision of the Tax Court in a case that was not a rebate case.

26. In reply to the Minister's argument that the Tribunal's role did not include the granting of the specific rebate, Quay pointed out that subsection 81.27(1) of the *Act* states the following:

After hearing an appeal under this Part, the Tribunal may dispose of the appeal by making such finding or declaration as the nature of the matter may require and by making an order	Après avoir entendu un appel prévu à la présente partie, le Tribunal peut statuer par décision ou déclaration, selon la nature de l'affaire, et en rendant une ordonnance :
. . .	[…]
(*b*) allowing the appeal in whole or in part and vacating or varying the assessment or determination or referring it back to the Minister for reconsideration.	*b*) soit faisant droit à l'appel en totalité ou en partie et annulant ou modifiant la décision faisant l'objet de l'appel ou renvoyant l'affaire au ministre pour réexamen.

27. In this regard, Quay submitted that the Tribunal does have the jurisdiction and authority to make an order which specifically indicates the amount of the rebate.

Minister

28. The Minister submitted that this case really comes down to whether the definition of "residential complex" in the *Act* applies only to a single building or whether it can include more than one building. In this regard, he argued that it must include only one building. He argued that the language of the provision itself, as well as the case from the Tax Court, supports this position.

29. The Minister submitted that the definition of "residential condominium unit" requires that the entire project be registered under a single strata lot plan, which, he submitted, the Renaissance Development was not.

30. The Minister submitted that the proper interpretation of "residential condominium unit" under paragraph 121(3)(*b*) of the *Act* refers to one building on a strata lot plan and that the facts are undisputed that the Rialto and the Lido were on separate strata lot plans as of the end of December 1990. He also pointed out that the buildings in *Cragg & Cragg* were all registered under one strata lot plan.

31. Furthermore, with respect to the *Interpretation Act* and, specifically, the pluralizing of the term "building" in the string of definitions concerning "condominium complex", the Minister argued that the *Interpretation Act* should not be triggered in this case because the language in the *Act* provides a contrary intention to this interpretation. In support of this contrary intention argument, he relied on *B.C. Ltd.*, which interpreted the same provision of the *Act* and determined that there was an intention in the language of the legislation and the legislative scheme contrary to the pluralizing of the term "building". In this regard, he submitted that the decision of the Tax Court was not "necessarily" binding on the Tribunal, but that it should be of persuasive force.

32. Based on the above, the Minister submitted that Quay's first line of argument should be dismissed.

14. R.S.C. 1985, c. T-2.

33. With respect to Quay's alternative argument, the Minister noted that, even though Quay has abandoned its argument that the cost of the land should be included in the calculation for percentage of completion, it is not the Tribunal's role to determine whether a rebate should actually be granted or not. Rather, he submitted that the Tribunal should send the matter back for re-determination and an audit if it determined that Quay is entitled to a rebate. Furthermore, he argued that the Tribunal need not concern itself with the actual numbers put forth by Quay.

DECISION

34. As its primary argument, Quay requested that its Renaissance Development be assessed as a single "condominium complex" for the purposes of subparagraph 121(3)(*b*)(ii) of the *Act* even though the development consisted of two phases—the Lido and the Rialto.

35. The Tribunal notes that paragraph 121(3)(*b*) of the *Act* provides that a rebate is to be paid "where the complex is a residential condominium unit in a condominium complex". In light of this provision and the submissions of the parties, the Tribunal is of the view that it must assess, based on the evidence, whether the Renaissance Development ought to be considered a "condominium complex" for the purposes of this provision. The term "condominium complex" is defined under subsection 123(1) as follows:

> "condominium complex" means a residential complex that contains more than one residential condominium unit.
>
> «immeuble d'habitation en copropriété» Immeuble d'habitation qui contient au moins deux logements en copropriété.

36. The phrases "residential complex" and "residential condominium unit" are also defined under subsection 123(1) of the *Act*:

> . . .
>
> "residential complex" means
>
> (*a*) that part of a building in which one or more residential units are located, together with
>
> (i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and
>
> (ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,
>
> "residential condominium unit" means a residential complex that is, or is intended to be, a bounded space in a building designated or described as a separate unit on a registered condominium or strata lot plan or description, or a similar plan or description registered under the laws of a province, and includes any interest in land pertaining to ownership of the unit;
>
> . . .
>
> […]
>
> «immeuble d'habitation»
>
> *a*) La partie constitutive d'un bâtiment qui comporte au moins une habitation, y compris :
>
> (i) la fraction des parties communes et des dépendances et du fonds contigu au bâtiment qui est raisonnablement nécessaire à l'usage résidentiel du bâtiment,
>
> (ii) la proportion du fonds sous-jacent au bâtiment correspondant au rapport entre cette partie constitutive et l'ensemble du bâtiment;
>
> […]
>
> «logement en copropriété» Immeuble d'habitation qui est, ou est censé être, un espace délimité dans un bâtiment et désigné ou décrit comme étant une unité distincte sur le plan ou la description enregistrés y afférents, ou sur un plan ou une description analogues enregistrés en conformité avec les lois d'une province, ainsi que tous droits et intérêts fonciers afférents à la propriété de l'unité.
>
> […]

37. Quay argued that the term "building" found in the string of definitions relating to "condominium complex" ought to be interpreted to also mean "buildings" by virtue of the *Interpretation Act*. The Minister argued against this liberal interpretation. The Tribunal is of the view that this issue does not need to be addressed, given the evidence in this matter.

38. The Tribunal finds that the Renaissance Development, which includes both the Lido and the Rialto, constitutes a single "building" for the purposes of the *Act*. By reviewing the architectural design of the project, it becomes apparent that the Renaissance Development is, in fact, a complex which consists of two towers sitting on a single foundation with common services and shared property developments. Furthermore, the evidence also indicates that both the Lido and the Rialto share common basement walls, parking facilities, waterfront and other amenities. On this basis, the Tribunal finds that the Lido and the Rialto, together, constitute a "condominium complex" for the purposes of the *Act*.

39. The Tribunal notes that the Minister argued that the Renaissance Development does not constitute a "condominium complex" since, at the time of evaluation, the Lido and the Rialto were not registered under a single "strata lot plan". The Tribunal is not convinced by this argument. It is of the view that a plain reading of the string of definitions relating to "condominium complex" does not require that the Rialto and the Lido be registered on a single strata lot plan. Rather, the definition of "residential condominium unit", in particular the French version, indicates that it is the residential condominium unit that must be described as a separate unit on a strata lot plan. Consequently, the fact that the Lido and the Rialto were not registered under a single strata lot plan at January 1, 1991, (although they were originally) does not prevent them from being considered a condominium complex.

40. Having found in Quay's favour on its primary argument, the Tribunal does not need to consider its alternative argument.

41. The Tribunal therefore returns this matter to the Minister for reconsideration of Quay's application for a rebate in a manner consistent with the above determination.

Patricia M. Close
Patricia M. Close
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Ellen Fry
Ellen Fry
Member

IN THE MATTER OF an appeal heard on July 14, 2005, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated February 15, 2002, pursuant to subsection 121(3) of the *Excise Tax Act*.

BETWEEN

QUAY DEVELOPMENTS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

CORRIGENDUM

In the English version of the Statement of Reasons, the last sentence of paragraph 6 should read as follows: "Mr. Molnar indicated that Quay had a separate site-servicing loan of $7.51 million for these costs, which was in addition to the actual construction budget."

By order of the Tribunal,

Hélène Nadeau
Secretary