



Ottawa, Monday, August 15, 1994

**Appeal No. AP-93-264**

IN THE MATTER OF an appeal heard on March 22, 1994,  
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 March 22, 1993, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**CRAGG & CRAGG DESIGN GROUP LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed (Member Blouin dissenting). The majority of the Tribunal returns this matter to the Minister of National Revenue for reconsideration of the appellant's application for a federal sales tax new housing rebate in a manner consistent with this decision.

Sidney A. Fraleigh

Sidney A. Fraleigh  
Presiding Member

Michèle Blouin

Michèle Blouin  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-264**

**CRAGG & CRAGG DESIGN GROUP LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the federal sales tax new housing rebate must be calculated on a building-by-building basis, as determined by the respondent, or whether it may be calculated on the basis of an entire project consisting of several buildings, as claimed by the appellant.*

***HELD:** The appeal is allowed (Member Blouin dissenting). In resolving the issue in this appeal, the Tribunal must determine whether the expression "condominium complex," as it is used in paragraph 121(3)(b) of the Excise Tax Act, is limited to a single building or whether it can encompass a collection of buildings. In giving meaning to this expression, the Tribunal is directed to the definition of "residential complex." The respondent's position rests on the use of the word "building," in the singular, in the definition of "residential complex." In contradiction, counsel for the appellant argued that the word "building" could be read in the plural and, as such, a condominium complex may be comprised of more than a single building.*

*Based on subsection 33(2) of the Interpretation Act, the majority of the Tribunal is satisfied that the word "building," found in the definition of "residential complex," can be read in the plural. When the word "building" is read in the plural, the majority of the Tribunal is satisfied that a residential complex may encompass more than a single building. Accordingly, a condominium complex may also encompass more than a single building, such as the appellant's condominium project.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: March 22, 1994*

*Date of Decision: August 15, 1994*

*Tribunal Members: Sidney A. Fraleigh, Presiding Member*

*Michèle Blouin, Member*

*Desmond Hallissey, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Robert S. Anderson, for the appellant*

*Gilles Villeneuve, for the respondent*

**Appeal No. AP-93-264**

**CRAGG & CRAGG DESIGN GROUP LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member  
MICHÈLE BLOUIN, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue (the Minister) rejecting an application for a federal sales tax (FST) new housing rebate filed under paragraph 121(3)(b)<sup>2</sup> of the Act.

The appellant's rebate application was filed with respect to a condominium project, referred to as Illahee, located in North Vancouver, British Columbia. As designed, Illahee consists of 17 buildings, containing 116 condominium units, and a recreational centre, being common property to the project. As of January 1, 1991, 11 buildings, representing Phase I of Illahee, were completed: 10 buildings containing 42 residential condominium units and 1 building containing the recreational centre. In addition, site preparation and excavation had been done on Phase II of Illahee, and many of the common services between the phases had been installed, including garbage facilities, water, sewers, roads and electrical switching gear. However, actual construction of the buildings of Phase II had not commenced.

In the rebate application, the appellant claimed that 55 percent of Illahee<sup>3</sup> had been completed by January 1, 1991, and estimated its FST new housing rebate to be \$427,237.50. However, by notice of determination, the appellant was informed that only the rebate for Phase I of Illahee was allowed in the amount of \$185,501.25. This represented 75 percent of the estimated FST on the 10 buildings containing the 42 residential condominium units. In rejecting the balance of the application, it was explained that,

*[t]he definitions in the Excise Tax Act refers [sic] to a condominium complex as a building which contains more than one residential condominium unit. Therefore, each building in a condominium development must be assessed individually to determine whether or not it is more than 25% complete in order to qualify for the Federal Sales Tax New Housing Rebate.*

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1. R.S.C. 1985, c. E-15.
  2. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, c. 27, s. 7.
  3. Pursuant to paragraph 121(3)(b) of the Act, where the construction of a condominium complex was, on January 1, 1991, more than 50 percent completed, 75 percent of the estimated FST for the residential condominium unit shall be rebated to the builder. The terms "condominium complex" and "residential condominium unit" are defined in the Act.

*Your claim has been adjusted to allow the prescribed floor space of the buildings in Phase I. The floor space of the buildings in Phase II has not been allowed since they were not more than 25% completed on January 1, 1991.*

The appellant objected to the determination, which was later confirmed by the Minister. In the notice of decision, it was stated that the FST new housing rebate is "to be accounted for on a building[-]by[-]building basis and not on an entire project basis." Cragg & Cragg Design Group Ltd. then appealed the determination to the Tribunal.

The issue in this appeal is whether the FST new housing rebate must be calculated on a building-by-building basis, as determined by the respondent, or whether it may be calculated on the basis of an entire project consisting of several buildings, as claimed by the appellant. In addition, counsel for the appellant argued that the Minister is estopped from evaluating the appellant's rebate application in a manner contrary to the alleged advice of officials of the Department of National Revenue (Revenue Canada) who claimed that it would be evaluated on the basis of the entire project. To understand the evidence and arguments of the parties, the relevant, though tediously oblique, legislation,<sup>4</sup> as it read on the date of the appellant's rebate application, is reproduced below:

*121.(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.*

*"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.*

*"condominium complex" means a residential complex that contains more than one 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*

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4. The legislation was retroactively amended on June 10, 1993, *supra*, note 2.

- (ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,*
- (b) that part of a building that is*
  - (i) the whole or part of a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a separate parcel or other division of real property owned, or intended to be owned, apart from any other unit in the building, and*
  - (ii) a residential unit,*

*together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for its use and enjoyment as a place of residence for individuals, and*

- (c) the whole of a building ...*
- (c.1) a mobile home ... and*
- (c.2) a floating home,*

*but not including any part of a building or the land or appurtenances attributable to a building.*

Mr. George Philip Cragg, part owner of Cragg & Cragg Design Group Ltd., provided evidence on behalf of the appellant. Mr. Cragg provided the history and a description of Illahee to the Tribunal. He described the two phases of Illahee and the linkage between the 18 buildings of the project. These include the shared recreational centre, guest and underground parking, common easements, sidewalks, roads, water, sewers, hydro, and a single condominium corporation and title to the land. Mr. Cragg also told the Tribunal that, on several inquiries to Revenue Canada, he was informed that the FST new housing rebate would be calculated on the basis of the entire Illahee project. He also described the economic hardships that the appellant endured because of the recession, the introduction of the Goods and Services Tax (GST) and Revenue Canada's position on the calculation of the FST new housing rebate.

Counsel for the appellant argued that the purpose of the FST new housing rebate is to avoid double taxation. He insisted that, under the Minister's interpretation of the rebate provisions of the Act, the appellant is taxed twice on three bases: it receives only 75 percent of the FST paid on Phase I, it is taxed twice on any FST paid on Phase II and it does not receive a rebate of the FST paid on the recreational centre. Counsel added that it is irrational to interpret the legislation in such a way that a condominium tower qualifies for the rebate, but Illahee does not. He stressed that, from an economic and development perspective, both types of developments are similar and that it would be unfair to treat them differently for purposes of the FST new housing rebate.

With regard to paragraph 121(3)(b) of the Act, counsel for the appellant argued that the word "complex" is fundamental to the interpretation of that paragraph. He referred to several dictionary definitions in support of the proposition that "complex" may be defined to mean "a set of buildings."<sup>5</sup> Counsel also made reference to government publications and speeches in

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5. The Oxford Paperback Dictionary (Oxford: Oxford University Press, 1979) at 124.

support of this proposition.<sup>6</sup> Referring to subsection 33(2) of the *Interpretation Act*,<sup>7</sup> counsel argued that reference to the word "building" in the definition of "residential complex" can be read in the plural. In support of his contention, he submitted that two other words drafted in the singular must be read in the plural for the rebate provisions to be logical.<sup>8</sup> As such, a residential complex may be composed of several buildings. Counsel submitted, therefore, that the calculation of the FST new housing rebate should not be made on a building-by-building basis. Rather, the rebate can be calculated on the basis of an entire project, consisting of a set of buildings.

Referring to the notice of determination, which contained a revised copy of the appellant's application for an FST new housing rebate, counsel for the appellant argued that the Minister had, in fact, recalculated the appellant's rebate on a multi-building basis. For instance, in describing the number of units in the condominium complex, the rebate application was revised to state "42 (Phase I only)." As the 42 condominium units are contained in 10 buildings, counsel argued that the Minister had interpreted "condominium complex" to include 10 buildings.

In the alternative, counsel for the appellant argued that the Minister is estopped from evaluating the appellant's rebate application in a manner contrary to the representations made and interpretation given to the appellant by authorized officials of Revenue Canada. He submitted that, as the legislation at issue is ambiguous, the prohibition on applying estoppel against the government does not apply.

With regard to the revised FST new housing rebate application, counsel for the respondent argued that defining "condominium complex" to include 10 buildings of Phase I was simply a convenient way of calculating the rebate. Regardless, representations by officials of Revenue Canada cannot bind the Minister to a particular interpretation of the rebate legislation. Nor can the Tribunal refuse to apply the law, even on grounds of equity.<sup>9</sup>

Counsel for the respondent argued that the common and ordinary meaning of the word "complex" includes a building<sup>10</sup> and that the French equivalent, "*immeuble*," is also defined to include a building.<sup>11</sup> With regard to reading the word "building," as found in the definition of "residential complex," in the plural, counsel referred to subsection 15(2) of the *Interpretation Act*, which reads as follows:

*Where an enactment contains an interpretation section or provision, it shall be read and construed*  
*(a) as being applicable only if a contrary intention does not appear; and*

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6. See, for example, GST Questions and Answers, Tax Application - Goods - Real Property, GST No. 2.E.168, Q11180, revised February 1992.

7. R.S.C. 1985, c. I-21, s. 33(2), which states that "[w]ords in the singular include the plural, and words in the plural include the singular."

8. Counsel submitted that the word "unit" in the expression "condominium unit" must be read in the plural. In addition, the word "part," found in the definition of "residential complex" must, at times, be read in the plural.

9. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.

10. The Concise Oxford Dictionary of Current English, 8th ed. (Oxford: Clarendon Press, 1990) at 233.

11. Le Nouveau Petit Robert (Montréal: DICOROBERT, 1993) at 1129.

*(b) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.*

Counsel submitted that, when a specific meaning of a word does not concord with the context of the Act, the rules of the *Interpretation Act* are not to be applied. Counsel argued that the context of the Act indicates that the word "building" should not be read in the plural. As such, entitlement to the FST new housing rebate is determined on a building-by-building basis and not on the basis of an entire project.

Counsel for the respondent acknowledged that, under the scheme of the FST new housing rebate provisions, there may be some double taxation. However, the appellant was not taxed twice. For instance, there were no construction materials used in Phase II of Illahee. In addition, as the builder of the project, the appellant paid neither FST nor GST, since the manufacturer of the materials pays the FST and the purchaser of a condominium pays the GST.

With regard to any representations made to the appellant by authorized officials of Revenue Canada, the Tribunal is in agreement with counsel for the respondent that these representations cannot bind the Minister to a particular interpretation of the rebate legislation.

In resolving the issue in this appeal, the Tribunal must determine whether the expression "condominium complex," as it is used in paragraph 121(3)(b) of the Act, is limited to a single building or whether it can encompass a collection of buildings, such as Illahee. As the Act does not contain a contrary intention, the Tribunal is satisfied that the relevant definitions provided in the Act are applicable to its interpretation.<sup>12</sup> As the expression "condominium complex" is defined in the Act, the Tribunal rejects the arguments, tendered by both parties, based on the grammatical and ordinary meaning of the word "complex" and its French equivalent "*immeuble*."

In giving meaning to the expression "condominium complex," the Tribunal is directed to the definition of "residential complex." Though not argued orally, the respondent's position that the FST new housing rebate must be calculated on a building-by-building basis is grounded in the use of the word "building," in the singular, in the definition of "residential complex." In contradiction, counsel for the appellant maintained that the word "building" could be read in the plural and, as such, that a condominium complex may be comprised of more than a single building.

Based on subsection 33(2) of the *Interpretation Act*, the majority of the Tribunal is satisfied that the word "building" can be read in the plural and rejects, therefore, the argument of counsel for the respondent that subsection 15(2) of the *Interpretation Act* prohibits such a reading. When read in the plural, the majority of the Tribunal is satisfied that a residential complex may encompass more than a single building. Accordingly, a condominium complex may also encompass more than a single building, such as Illahee.

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12. *Interpretation Act*, *supra*, note 7, s. 15(2).

Accordingly, the appeal is allowed. The majority of the Tribunal returns this matter to the Minister for reconsideration of the appellant's application for an FST new housing rebate in a manner consistent with this decision.

Sidney A. Fraleigh

Sidney A. Fraleigh

Presiding Member

Desmond Hallissey

Desmond Hallissey

Member

#### DISSENTING OPINION OF MEMBER BLOUIN

I cannot agree with the conclusion that "residential complex" can be interpreted to include more than a single building. Though subsection 33(2) of the *Interpretation Act* directs that words in the singular include the plural, I am not persuaded that the word "building," found in the definition of "residential complex," should be read in the plural. For instance, if "building" were read in the plural in paragraph (a) of the definition of "residential complex," numerous other changes would be required within the definition for it to be grammatically correct and logically consistent.<sup>13</sup> Because of the extent of these changes, I am persuaded that "building" was never intended to be read in the plural. As such, I interpret "residential complex" to be limited to a single building, which would require the Minister to calculate the FST new housing rebate on a building-by-building basis.

Michèle Blouin

Michèle Blouin

Member

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13. For instance, subparagraph (a)(ii) of the definition of "residential complex" would need to be read something like "that proportion of the land subjacent to the buildings that those parts of the buildings are to all the buildings."