CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, July 27, 1998

Appeal No. AP-96-217

IN THE MATTER OF an appeal heard on October 6, 1997, 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 November 20, 1996, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

HI-GROVE HOLDINGS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Raynald Guay
Raynald Guay
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-96-217

HI-GROVE HOLDINGS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* (the Act) from a determination of the Minister of National Revenue disallowing the appellant's application for a federal sales tax (FST) new housing rebate made pursuant to subsection 121(3) of the Act. There are two issues in this appeal. The first is whether the appellant, the contractor of a 57-unit rental apartment building that did not own the land on which the apartment building was constructed, can be considered a "builder" under section 123 of the Act and, therefore, be entitled to an FST new housing rebate under section 121 of the Act. The second issue is whether the construction of the complex was more than 25 percent completed on January 1, 1991. In an joint statement of facts filed by the parties at the hearing, it was agreed that, based on actual cost figures for the construction of the complex, the percentage of completion of the complex was less than 25 percent on January 1, 1991, if the cost of the building permit and development cost charges are excluded from the calculation, and more if those costs are included. In other words, the second issue is to determine whether the cost of the building permit and the development cost charges should be included in the calculation of the percentage of completion.

HELD: The appeal is allowed. The Tribunal is of the view that the appellant met all of the conditions enunciated in subparagraph (*a*)(iii) of the definition of "builder" found in subsection 123(1) of the Act and, therefore, that it could be considered a "builder" under that provision. With respect to the second issue, the Tribunal is of the view that the cost of the building permit and the development cost charges would more properly form part of the cost of the building than the cost of the land. Furthermore, the definition of the term "residential complex" in subsection 123(1) of the Act includes more than the actual building; it also includes the land. As a result, the Tribunal finds that the cost of the building permit and the development cost charges should have been included in the calculation of the percentage of completion of the complex and, therefore, that the complex was more than 25 percent completed on January 1, 1991.

Place of Hearing:	Vancouver, British Columbia
Date of Hearing:	October 6, 1997
Date of Decision:	July 27, 1998
Tribunal Members:	Arthur B. Trudeau, Presiding Member Patricia M. Close, Member Raynald Guay, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Joanne K. Glover, for the appellant Edward (Ted) Livingstone, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-96-217

HI-GROVE HOLDINGS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
PATRICIA M. CLOSE, Member
RAYNALD GUAY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) from a determination of the Minister of National Revenue disallowing the appellant's application for a federal sales tax (FST) new housing rebate, in the amount of $138,135, made pursuant to subsection 121(3) of the Act.

At the time, the appellant was a contractor for the construction of new housing. In 1990, the appellant started construction on a 57-unit rental apartment building, located at 33392 Mayfair Avenue, Abbotsford, British Columbia. The construction of the complex spanned over the transition period from the FST to the Goods and Services Tax (GST). Title to the real property on which the complex was constructed was registered in the name of W & I Contracting Ltd. (W&I). Mr. Dave Wiebe and his wife wholly owned and controlled the appellant, while Mr. Wiebe wholly owned and controlled W&I. On September 14, 1990, W&I applied to the Corporation of the District of Matsqui for a building permit. The appellant was identified as the general contractor. On October 17, 1990, a calculation for the development cost charges (DCCs) for this project was prepared by the Corporation of the District of Matsqui.

On February 28, 1992, the appellant filed an application for an FST new housing rebate in respect of the property. The appellant's application was denied on the basis that that the apartment building in question was less than 25 percent completed on January 1, 1991. The respondent relied on a letter dated January 28, 1991, from Concost Consultants Inc., which indicated that the apartment building was 15.7 percent completed on January 4, 1991. The appellant filed a notice of objection dated July 6, 1992. On November 20, 1996, the respondent issued a notice of decision disallowing the objection and confirming the determination. As an additional reason for denying the application, the respondent stated that the appellant was not the "builder" of the complex, as it did not own the real property on which the complex was constructed.

There are two issues in this appeal. The first is whether the appellant can be considered a "builder" under section 123 of the Act and, therefore, be entitled to an FST new housing rebate under section 121 of the Act. The second issue is whether the construction of the complex was more than 25 percent completed on January 1, 1991. In an joint statement of facts filed by the parties at the hearing, it was agreed that, based on actual cost figures for the construction of the complex, the percentage of completion of the complex was less than 25 percent on January 1, 1991, if the cost of the building permit and the DCCs are excluded from the calculation, and more if those costs are included. In other words, the second issue is whether the cost of the building permit and the DCCs should be included in the calculation of the percentage of completion.

1. R.S.C. 1985, c. E-15.

Mr. Wiebe, a shareholder and director of W&I, testified on behalf of the appellant at the hearing. He explained that, in 1990 and 1991, the appellant was in the apartment building construction business, while W&I was the owner and operator of apartment buildings. Mr. Wiebe testified that W&I was the owner of the real property situated at 33392 Mayfair Avenue, on which a 57-unit residential complex was built by the appellant. He explained that W&I had an agreement with the appellant to construct an apartment building for W&I at cost. As a result, the appellant did not obtain any profit from the construction of the building.

Mr. Wiebe testified that W&I applied for a building permit in September 1990 and that it was issued in two stages; first, a foundation permit was issued in October 1990, then W&I obtained the actual building permit in November of that same year. He explained that the permits were issued separately to allow the appellant to begin construction at an earlier date. He testified that, prior to being granted the foundation permit, the appellant did the excavation work, the land clearing and the form work and put the steel rods in place. Once the foundation permit was granted, the appellant started the actual construction. Mr. Wiebe explained that, prior to the issuance of the building permit, the appellant had a framing crew on site to prefabricate the walls. These walls were installed once the building permit was issued.

Mr. Wiebe explained that, to obtain a building permit, W&I had to submit a full set of drawings, which included architectural, structural, landscape, civil and other minor consulting drawings, to ensure that the building complied with the various by-laws of the city. He also testified that the appellant paid the DCCs to the municipality in respect of the construction of the building, which were calculated on a per suite basis. He said that the amount paid for the DCCs are allocated to such things as the sewage treatment plant, water, parks and sewers. Mr. Wiebe testified that, in all the jurisdictions in which he has worked, the DCCs are always calculated on a per suite basis and that they are always payable prior to the issuance of the building permit. The only thing which varies is the amount of the charges. Mr. Wiebe testified that the construction project was financed by the appellant through the Canadian Imperial Bank of Commerce, that the appellant was in actual physical possession of the property for the purpose of carrying on the construction project and that there was never any official transfer of the property between the appellant and W&I before January 1, 1991.

In answering questions from the Tribunal, Mr. Wiebe explained that a building permit is only issued once the DCCs are paid. He added that it is possible to buy a piece of land on which DCCs have already been paid. Mr. Wiebe confirmed that the DCCs for the project at issue were $189,795.75, while the cost of the building permit was $7,933.00. He explained that, out of the amount paid for the DCCs, approximately $12,000 was allocated to the sewage treatment plant, $8,000 to water, $30,000 to storm sewers, $84,000 to roads and $53,000 to parks. He explained that, generally, DCCs tend to be higher in the city.

With respect to the first issue, counsel for the appellant argued that the appellant did not have to own the land to be considered a "builder" under the Act. It suffices that the appellant had possession of the complex. She argued that whether one has possession of property is a question of fact which must be determined by taking into account the unique circumstances of each case. She referred to a quote from *Anger and Honsberger Law of Real Property*[2] in support of her argument. She argued that the fact that the appellant was the contractor and the builder of the complex, the fact that it did the landscaping and the fact that the appellant and W&I were essentially the same company show that the appellant was in possession of the property. Quoting again from *Anger and Honsberger Law of Real Property*, counsel argued that the simple fact that the appellant was in physical possession of the land shows that it had a property interest in it. She argued that, in certain circumstances, the actual owner may not be in possession of the land and vice versa. She submitted that the fact that the appellant did the excavation and cleared and improved the land shows that it was in possession of it.

2. A.H. Oosterhoff and W.B. Rayner, Vol. 1, 2nd ed. (Aurora: Canadian Law Book, 1985).

According to counsel for the appellant, the appellant meets the definition of "builder" under subparagraph (*b*)(ii) of that definition found in subsection 123(1) of the Act, i.e. that the appellant acquired an interest in the complex at a time when it was under construction. Counsel also argued that the appellant is not excluded from the definition by virtue of paragraph (*f*) of the definition of "builder," because it is not an "individual." She noted that an "individual" is defined in the Act as "a natural person." As such, the exclusion does not apply to the appellant, which is a company. Counsel referred to the *Builders Lien Act*[3] of British Columbia and the law on construction liens in British Columbia to support her argument that the appellant had an interest in the land. In essence, she argued that an interest in land or a right to a lien is acquired as soon as work is done or materials are furnished. Furthermore, once the lien has arisen, it attaches to all parts of the property.

Counsel for the appellant argued that, in *Michael and Arlene Tugwell* v. *The Minister of National Revenue*,[4] the Tribunal did not find that, to be entitled to an FST new housing rebate, an applicant had to be the owner of the real property. She argued that to have made such a finding would have been contrary to the Act, which provides that a person who has "possession" or an "interest" in the property can be considered the "builder." Counsel referred to the Tribunal's decision in *Brial Holdings Ltd.* v. *The Minister of National Revenue*,[5] where it was held that a contractor who did not own the land on which a residential complex was constructed had an interest in the residential complex during the time that it was being built, since the contractor was supplying all of the materials and the labour.

With respect to the second issue, counsel for the appellant relied on the decision of the Tax Court of Canada in *Richard B. Stursberg* v. *The Minister of National Revenue*[6] and argued that, since the DCCs were only payable upon issuance of the building permit, they must be associated with the cost of construction of the building and not the cost of acquiring or holding the land. Counsel relied on the Tribunal's decision in *Simon and Jean Clarke* v. *The Minister of National Revenue*[7] in support of her argument that it is proper to consider industry standards in order to determine the interpretation to be given to certain provisions under the Act. She noted that, in *Clarke*, the Tribunal relied on industry standards in determining that the "excavation" of land was part of the "construction" process.

Accordingly, counsel for the appellant referred to a handbook, entitled "Recommended Accounting Practices for Real Estate Investment and Development Companies,[8]" which was prepared by the Canadian Institute of Public Real Estate Companies to fill a gap which had developed in applying the rules of the Canadian Institute of Chartered Accountants. Counsel referred to section 204 of the handbook, entitled "Development and Construction Costs," which reads, in part, as follows: "Whether such costs should be charged to the land or building account depends on the nature of the cost and the circumstances. Typically, when such costs relate to a land project, they should be capitalized to the land component. On the other hand, if the project involved the construction of houses or an income-producing property, such costs would be capitalized to the housing or building component.[9]" Counsel also referred to other parts of the handbook and argued that, when a construction project includes land and a building, the DCCs must be allocated to the

3. R.S.B.C. 1979, c. 40.
4. Canadian International Trade Tribunal, Appeal No. AP-92-278, May 2, 1994.
5. Appeal No. AP-92-039, July 27, 1993.
6. 90 D.T.C. 1159, Court File Nos. 88-33(IT), 87-1983(IT), 88-31(IT), 88-32(IT), 88-34(IT), 88-35(IT), 88-36(IT) and 88-120(IT), January 9, 1990.
7. Appeal No. AP-92-065, March 18, 1994.
8. Canadian Institute of Public Real Estate Companies, September 1990.
9. *Ibid*. par. 204.3.

building and not to the land. In support of her argument, counsel then referred to the *Municipal Act*[10] of British Columbia, which provides that DCCs are imposed on the building permit, which authorizes the construction of a building.

Counsel for the appellant noted that subsection 121(3) of the Act was amended in 1992. The words "construction of" were added before the words "the complex." At that point, counsel for the respondent interjected and stated that, since the amendment only came into force on September 15, 1992, it did not apply to the appellant, since it filed its application before that date. In any event, counsel for the appellant argued that "construction of the complex" must mean construction of the land and of the building and not just construction of the building. She argued that, by giving the words in the statute their plain and ordinary meaning, the Tribunal will find that both the costs associated with the land and the costs associated with the building must be included in determining the percentage of completion. She relied on the decision of the Supreme Court of Canada in *Jake Friesen* v. *Her Majesty the Queen*[11] in support of her argument that words in a statute must be given their plain and ordinary meaning, unless the court or tribunal interpreting them finds that they are ambiguous. Only in such circumstances can reference be made to the intention of Parliament. Counsel for the appellant referred to sections of the Act where the words "construction of the building" were found to support her argument that "construction of the complex" must mean something different, in this case, construction of the land and of the building. She argued that the words in the Act are clear. As such, any attempt by counsel for the respondent to argue that the intent of Parliament that the costs associated with the construction of the complex be limited to the costs associated with the construction of the building must be rejected.

Counsel for the appellant submitted that her arguments should be accepted, despite a draft policy[12] of the Department of National Revenue (Revenue Canada) which stated that "the cost of land and costs associated with the acquisition and maintenance of the land … incurred prior to 1991 should not be included in the determination of the percentage of completion of the complex." The draft policy also stated that "[t]his position is consistent with the Department of Finance press releases … where it was proposed that section 121 be amended, effective January 15, 1992, to clarify that it is the degree of physical construction or substantial renovation of a building that is to be taken into consideration" and that "the definition of 'specified residential complex' refers to its construction or substantial renovation. Land is not generally regarded as being constructed or renovated." Counsel referred to the decision of the Tax Court of Canada in *227287 Alberta Ltd.* v. *Her Majesty the Queen*[13] in support of her argument that it is the words of the statute and not the intention of government officials which must be considered in interpreting legislation.

Counsel for the appellant noted that the draft policy provides that the "costs … integral to the construction process" may be included in determining the percentage of completion of the construction. Relying on her previous arguments, she argued that those costs must include the DCCs and the cost of the building permit. Finally, counsel argued that, in most cases, including in one of Revenue Canada's own panel discussions,[14] the period of construction is normally considered to commence at the time when site development begins.

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10. R.S.B.C. 1979, c. 290.
11. 95 D.T.C. 5551, Court File No. 23922, September 21, 1995.
12. Appellant's Book of Authorities, Tab 21.
13. 5 G.T.C. 1106, Court File No. 96-1650(GST)I, May 28, 1997.
14. *Creative Tax Planning for Real Estate Transactions - Beyond Tax Reform and Into the 1990s*, prepared by the Canadian Tax Foundation for the Corporate Management Tax Conference 1989.

With respect to the first issue, counsel for the respondent argued that the appellant was not the "builder" of the residential complex as that term is defined in subsection 123(1) of the Act and, therefore, could not apply for an FST new housing rebate. If the Tribunal finds that the appellant was, in fact, the "builder," then counsel argued that the appellant is not entitled to a rebate, since the complex was less than 25 percent completed on January 1, 1991. Counsel argued that, for the purposes of the Act, there can only be a single builder of any residential complex. If this were not so, then several persons could apply for the same FST new housing rebate. Counsel referred to subparagraph (*a*)(iii) of the definition of "builder" found in subsection 123(1) of the Act, which provides that a "builder" is a person who, at a time when that person has an interest in the real property on which the complex is situated, carries on or engages another person to carry on the construction or substantial renovation of the complex. He argued that W&I was the builder under the Act because, during the period in question, it owned the land on which the complex was built. It engaged another person, that is, the appellant, to construct the complex for it. Counsel argued that, since W&I was the builder, then the appellant cannot be because there can only be one builder under the Act.

In addition, counsel for the respondent argued that the appellant did not have a proper interest in the land to be considered the "builder" under the Act. In his view, paragraph (*b*) of the definition of "builder" provides for situations where the building is sold during the course of construction and a new owner takes title to the land. Counsel argued that this enables the new builder to avoid double taxation. Counsel noted that, in *Brial*, a property owner had hired a contractor to build a house on the property. He then assigned the contractor his right to the FST new housing rebate. The Tribunal relied on paragraph (*b*) and held that the contractor was indeed the builder. The Tribunal also held that there had been a taxable supply by way of sale of the house back to the property owner, which was a requirement that had to be met when dealing with a single-family dwelling as opposed to a residential complex, even though there was only a contract to build the house between the property owner and the contractor. As a result, the Tribunal held that the contractor was entitled to the FST new housing rebate.

Counsel for the respondent argued that the only difference between *Brial* and *Tugwell* is that, in *Brial*, it is the property owner who applied for the rebate. In counsel's view, *Tugwell* overruled *Brial*, in that, in *Tugwell*, the Tribunal held that the applicant was not entitled to the rebate because there was no taxable supply by way of sale. Counsel argued that, since *Tugwell* was decided after *Brial*, the Tribunal had a better understanding of the section of the Act. He noted that, in *Tugwell*, the Tribunal stated that the purpose of the rebate provision is to avoid double taxation and that it is not intended to relieve anyone from paying tax. Counsel argued that it is important to note that, in *Tugwell*, the Tribunal mentioned that the contractor could have applied for an FST inventory rebate, but never mentioned that it could have applied for an FST new housing rebate. Counsel argued that the Tribunal should not follow its decision in *Brial*, in particular, its finding on the definition of the word "builder." Counsel submitted that there would be no double taxation in the present case if the appellant is not granted the rebate, as W&I is the company that must pay GST on the building. He noted that the appellant would have recovered all of its costs from W&I. He argued that those costs would include FST and GST.

With respect to the second issue, counsel for the respondent argued that cost of construction means the costs associated with the actual physical assembly of the building and that this does not include the cost of the building permit and the DCCs. In counsel's view, these costs are associated with the cost of the land, which were never meant by Parliament to be included in the calculation of the percentage of completion of the construction, for the following reasons: (1) there was no FST or GST paid on the cost of the building permit and the DCCs; and (2) such costs vary from one part of the country to the other; therefore, it would be vary unfair to include them in the calculation of the percentage of completion of the complex. Counsel referred to expert reports, which separated the hard costs from the soft costs, such as the costs at issue, in order to make adequate comparisons between construction projects. Finally, counsel argued that, in his view,

the term "construction," as it used in the legislation, is ambiguous. In addition, he argued that the industry's interpretation of that term is also ambiguous.

In reply, counsel for the appellant argued that the fact that the Act refers to "a" builder, rather than to "the" builder, implies that there can be more than one builder. Furthermore, the Act also has a timing element, i.e. it refers to the person who is the builder immediately before 1991. In her view, this also implies that there can be more than one builder under the Act. She argued that, in the case of a joint venture, for example, each party would be considered a builder under the Act and entitled to a rebate. Counsel submitted that there is 50 percent of the estimated FST to be given as a rebate to someone. If there are five builders, then the rebate can be divided between them. She argued that the rebate has to be given to someone. She noted that, if the Tribunal finds that the appellant is not entitled to the rebate in the present case, then no one gets it, because it is too late for W&I to apply for a rebate. Counsel argued that there are other costs that would be included in the percentage of completion, for example, labour costs, which obviously would not have been subject to FST or GST.

The first issue which must be determined by the Tribunal is whether the appellant can be considered a "builder" under the Act. Subparagraph 121(3)(*a*)(i) of the Act provides, in part, as follows:

> (3) Where, immediately before 1991, a builder of a specified residential complex … 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 subsection (4), pay a rebate to the builder equal to
>
> (*a*) where the complex is a multiple unit residential complex, the amount, if any, by which
>
> (i) 50% of the estimated federal sales tax for the complex, where the complex was, on January 1, 1991, more than 25% completed, and not more than 50% completed, and
>
> exceeds the amount of any rebate in respect of the complex that is paid to any other person under this subsection.

In the Tribunal's view, this provision clearly provides that, as long as a "builder" "owned" or "had possession" of a "residential complex," it could apply for an FST new housing rebate. "Ownership" and "possession" are treated as two different concepts. "Residential complex" is defined under subsection 123(1) of the Act, in part, as follows:

> "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.

Both parties agreed and the Tribunal is of the view that the 57-unit rental apartment building situated at 33392 Mayfair Avenue meets the definition of "residential complex" in the Act. The evidence shows that the appellant did not own the real property on which the complex was situated. However, ownership of the land is not required in order to be entitled to a rebate under the Act. In the Tribunal's view, the evidence clearly shows that the appellant was in actual possession of the complex immediately before 1991 and that, as such, if it met the definition of "builder" in the Act, then it was entitled to the rebate.

In order to be considered a "builder" of a "residential complex" under the Act, the appellant must meet one of the definitions of that term found in subsection 123(1). Counsel for the appellant referred the Tribunal to subparagraph (*b*)(ii) of the definition of "builder" and argued that the appellant met that

definition. Counsel for the respondent referred the Tribunal to subparagraph (*a*)(iii) of the definition of "builder" and argued that, since W&I met that definition, the appellant could not possibly be considered the "builder" of the residential complex, since there can only be one "builder" under the Act. Subparagraph (*a*)(iii) of the definition of "builder" reads, in part, as follows:

> 123. (1) In section 121, this Part and Schedules V, VI and VII,
>
> "builder" of a residential complex or of an addition to a multiple unit residential complex means a person who
>
> (*a*) at a time when the person has an interest in the real property on which the complex is situated, carries on or engages another person to carry on for the person
>
> (iii) in any other case, the construction or substantial renovation of the complex.

The evidence clearly shows that the appellant carried on the construction of the residential complex situated at 33392 Mayfair Avenue. In order to meet the definition of "builder" under subparagraph (*a*)(iii) of that definition, the appellant must have had an interest in the real property on which the complex was situated at the time that it carried on the construction. In the Tribunal's view, to have "an interest in the real property," it is not necessary that the person own the land. If ownership of the real property was required, then the Tribunal is of the view that Parliament would have said so. In *Brial*, the Tribunal held that the appellant, a contractor, had an interest in a home during the time that it was being built, since it was supplying all the materials and the labour. In the present case, the evidence shows that the appellant did the excavation and cleared and improved the land. To do this work, the appellant had to supply the materials and the labour. Counsel for the appellant argued that this gave the appellant the right to a lien on the property pursuant to the *Builders Lien Act* of British Columbia. She argued that a lien arises and attaches to the land as soon as work is done or materials are furnished. Furthermore, once the lien has arisen, it attaches to all parts of the property. She noted that a "lien" is defined as "an interest in the land."

Although, it is clearly not within the Tribunal's mandate to make a determination as to whether or not the appellant would have had a right to a lien on the real property situated at 33392 Mayfair Avenue pursuant to the *Builders Lien Act* of British Columbia, the Tribunal finds the appellant's argument helpful in coming to the conclusion that the appellant did in fact have "an interest in the real property" on which the complex was situated at the time that it carried on the construction of the complex. As a result, the Tribunal is of the view that the appellant met all of the conditions enunciated in subparagraph (*a*)(iii) of the definition of "builder" found in subsection 123(1) of the Act and that the appellant, therefore, can be considered a builder. The appellant was, therefore, entitled to an FST new housing rebate. The Tribunal agrees with counsel for the respondent that W&I would also meet the conditions enunciated in subparagraph (*a*)(iii) and could also have been considered a "builder" under that provision. Consequently, in the Tribunal's view, W&I could also have applied for the rebate. As such, there could be more than one builder under the Act. This simply means that more than one person could apply for the rebate. Obviously, however, Revenue Canada would only be required to pay one rebate.

Having determined that the appellant meets the definition of "builder" under the Act, the Tribunal must now determine whether the residential complex was, on January 1, 1991, more than 25 percent completed. As noted earlier, in an joint statement of facts filed by the parties at the hearing, it was agreed that, based on actual cost figures for the construction of the complex, the percentage of completion of the complex was less than 25 percent on January 1, 1991, if the cost of the building permit and the DCCs are excluded from the calculation, and more than 25 percent as of that date if those costs are included in the calculation. The second issue, therefore, is also whether the cost of the building permit and the DCCs should be included in the calculation of the percentage of completion.

First, the Tribunal notes that the evidence shows that the appellant paid for the cost of the building permit and the DCCs. The evidence also shows that the appellant could not have constructed the residential complex without paying these two amounts. On this basis alone, the Tribunal is of the view that the cost of the building permit and the DCCs would more properly form part of the cost of the building than the cost of the land. However, the Tribunal is also of the view that the definition of "residential complex" in the Act includes more than the actual building; it also includes common areas and other appurtenances to the building and the land immediately contiguous to the building that are necessary for the use and enjoyment of the building as a place of residence for individuals. The Tribunal must give the words in a statute their ordinary meaning. Accordingly, the Tribunal finds that a plain reading of the definition of "residential complex" in subsection 123(1) of the Act must include the land. As a result, the Tribunal finds that the cost of the building permit and the DCCs should have been included in the calculation of the percentage of completion of the complex in accordance with subparagraph 121(3)(*a*)(i) of the Act. Therefore, the complex was more than 25 percent completed on January 1, 1991.

Accordingly, the appeal is allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Raynald Guay
Raynald Guay
Member