Federal Court of Appeal  Cour d'appel fédérale

Date: 20161108

Docket: A-475-15

Citation: 2016 FCA 269

CORAM: **GAUTHIER J.A.**
STRATAS J.A.
GLEASON J.A.

BETWEEN:

ALEXANDER COLLEGE CORP.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on September 21, 2016.

Judgment delivered at Ottawa, Ontario, on November 8, 2016.

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: GAUTHIER J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] The appellant, Alexander College Corp., seeks to set aside the October 2, 2015 judgment of the Tax Court of Canada in *Alexander College Corp. v. HMQ*, 2015 TCC 238, 258 A.C.W.S. (3d) 234 [*Alexander College*], which confirmed an assessment for unpaid GST/HST on student fees charged by the College in 2010. The Tax Court found that Alexander College was required to collect and remit GST/HST as it did not fall within the applicable exemption set out in

paragraph 7 of Part III, Schedule V of the *Excise Tax Act*, R.S.C., 1985, c. E-15 [the *ETA*]. For the reasons that follow, I believe that the Tax Court incorrectly interpreted the *ETA* and that Alexander College falls within the paragraph 7 exemption. I would accordingly allow this appeal, with costs.

I. The Decision of the Tax Court in *Alexander College*

[2] Schedule V of the *ETA* sets out a long list of exemptions from the requirement to charge and remit GST/HST. The relevant exemption in the present case is in paragraph 7 of Part III, Schedule V and covers certain types of educational services. It exempts:

7 A supply made by a school authority, public college or university of a service of instructing individuals in, or administering examinations in respect of, courses for which credit may be obtained toward a diploma or degree.	7 La fourniture, effectuée par une administration scolaire, un collège public ou une université, d'un service consistant à donner à des particuliers des cours ou des examens qui mènent à un diplôme.

[3] It was common ground between the parties before the Tax Court and remains undisputed before this Court that the only portion of the foregoing exemption that might be applicable to Alexander College is the term "university" as the appellant is a private for-profit college. The term "university" is defined in subsection 123(1), Part IX of the *ETA* as follows:

university means a recognized degree-granting institution or an organization that operates a college affiliated with, or a research body of, such an institution.	***université*** Institution reconnue qui décerne des diplômes, y compris l'organisation qui administre une école affiliée à une telle institution ou l'institut de recherche d'une telle institution.

[4] Alexander College argues that it is a "university", within the meaning of the foregoing definition, because it is authorized to grant two-year associate degrees under provincial legislation, namely British Columbia's *Degree Authorization Act*, S.B.C. 2002, c. 24 [the *Degree Authorization Act*]. It also notes (and it is undisputed) that in British Columbia at least some traditional universities grant identical associate degrees and recognize Alexander College's courses for credit towards a four-year baccalaureate degree. Alexander College further underscores that in British Columbia there are both public and privately-funded universities as well as public and privately-funded colleges and vocational schools (as is contemplated by the *Degree Authorization Act*; British Columbia's *University Act*, R.S.B.C. 1996, c. 468; British Columbia's *College and Institute Act*, R.S.B.C. 1996, c. 52 and several statutes applicable to particular institutions, namely, Royal Roads University, Thompson Rivers University, Trinity Western University and Sea to Sky University).

[5] The Tax Court rejected Alexander College's assertion that it fell within the scope of the definition of a "university" for purposes of the *ETA* and held that to come within the scope of that definition an institution needed to be recognized as a university by the relevant provincial authorities and also needed to grant degrees at least at the baccalaureate level. Because Alexander College met neither criterion, the Tax Court found it did not fall within the applicable exemption and was therefore required to collect and remit the disputed GST/HST. The Tax Court offered several reasons in support of this conclusion.

[6] First, the Tax Court held that the wording used to define "university" in subsection 123(1) of the *ETA* suggests a distinction between an "institution" and colleges or

research bodies associated with such an “institution”. Given this, the Tax Court concluded that an “institution” must refer only to a “university”. Consequently, Alexander College would qualify for the exemption only if it were a traditional degree-granting university. The Tax Court found that Alexander College does not fit the traditional definition of a “university” because it is subject to constant third-party monitoring for the purposes of maintaining its capacity to grant associate degrees, unlike traditional universities, which self-monitor (*Alexander College* at paras. 51, 53, 62).

[7] Second, the Tax Court reviewed the holdings of this Court in *Klassen v. R.*, 2007 FCA 339, 161 A.C.W.S. (3d) 1019 [*Klassen*] and of the Tax Court in *Zailo v. R.*, 2014 TCC 60, 238 A.C.W.S. (3d) 254 [*Zailo*], which determined that the distinguishing feature between a university and a foreign college was the level of degree awarded. In both cases, a university – for the purposes of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [the *ITA*] – was deemed to be an institution that grants at least baccalaureate degrees. The Tax Court applied this reasoning to Alexander College and held that only institutions offering baccalaureate degrees or higher qualify as “recognized degree-granting institution[s]”, within the scope of the definition of “university” contained in subsection 123(1) of the *ETA* (*Alexander College* at paras. 65-68).

[8] Third, the Tax Court reasoned that including private colleges within the definition of “university” would be illogical given the wording and structure of the provisions in the *ETA*. More specifically, the Tax Court held that the “college affiliated with” option under the definition of “university” in subsection 123(1) of the *ETA* would be redundant and absurd if the affiliated institution could be another college as it makes no sense to speak of a college being

affiliated with another college. The Tax Court further held that the interpretation urged by Alexander College would result in the paragraph 7 exemption offending the presumption against tautology. It reasoned that such a reading would mean that private colleges would be subsumed within "university", whereas public colleges would be segregated out. The Tax Court held that such a reading would render Parliament's choice to identify "public college[s]" within the provision superfluous (*Alexander College* at paras. 70-74).

[9] Finally, the Tax Court offered in a footnote to its Reasons the suggestion that the interpretation advanced by Alexander College would offend the scheme of the *ETA* as it would result in the College being exempt in terms of its supplies but not entitled to claim either input tax credits or the public service body rebate. The Tax Court noted that "[t]his result seems contrary to the scheme of the *ETA* which is structured so that an entity making taxable supplies is entitled to claim input tax credits and an entity making exempt supplies such as a university is entitled to a rebate" (*Alexander College* at footnote 22).

II. Analysis

[10] This appeal raises a single question of statutory interpretation. On a question of law like statutory interpretation in the tax appeals context, the standard of review is correctness: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8-9, [2002] 2 S.C.R. 235; *Redeemer Foundation v. Minister of National Revenue*, 2006 FCA 325 at para. 24, 354 N.R. 147 (affirmed without comment on this point in 2008 SCC 46, [2008] 2 S.C.R. 643); *Bozzer v. Canada*, 2011 FCA 186 at para. 3, 418 N.R. 377.

[11] The appropriate methodology for statutory interpretation is well-known; courts must read the words of an Act "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": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, 154 D.L.R. (4th) 193; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26, [2002] 2 S.C.R. 559. This approach requires courts to consider the text, context and purpose of the statutory provision.

[12] While the foregoing approach applies to the interpretation of tax statutes, the Supreme Court of Canada has indicated that it is often appropriate to place greater emphasis on a textual interpretation when interpreting a taxation provision given the "degree of precision and detailed characteristics of many tax provisions": *A.Y.S.A. Amateur Youth Soccer Assn. v. Canada Revenue Agency*, 2007 SCC 42 at para. 16, [2007] 3 S.C.R. 217; *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20 at para. 23, [2006] 1 S.C.R. 715 [*Placer Dome*]; and *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 11, [2005] 2 S.C.R. 601 [*Canada Trustco*]. The Supreme Court of Canada further instructs that if the text of a taxation provision gives rise to "more than one reasonable interpretation", recourse to a contextual and purposive analysis should be employed to resolve ambiguities (*Placer Dome* at para. 23; *Canada Trustco* at para. 10). However, where a taxation provision "admits of no ambiguity in its meaning or in its application to the facts, [the provision] must simply be applied" (*Placer Dome* at para. 23).

[13] Under the foregoing analytical framework, one must ask whether the relevant provisions are ambiguous in that they are open to more than one reasonable interpretation. In my view, this

question must be answered in the negative in the present appeal as the relevant provisions are unambiguous and must be interpreted in the way Alexander College submits.

[14] More specifically, the paragraph 7 exemption applies to "universities". That term is conclusively defined in subsection 123(1) of the *ETA* as Parliament used the word "means" in setting out the definition of "university" for the purposes of the *ETA*. As Alexander College correctly notes, it is a well-accepted principle of statutory interpretation that the use of the word "means" in a statutory definition reflects Parliament's intention that the definition be exhaustive and therefore may well displace the ordinary meaning for a defined term: Ruth Sullivan, *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law Inc., 2016) at 79-80 [Sullivan]; *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34 at para. 42, [2012] 2 S.C.R. 231; *Yellow Cab Ltd. v. Board of Industrial Relations et al.*, [1980] 2 S.C.R. 761 at page 768, 114 D.L.R. (3d) 427; *Sheldon Inwentash and Lynn Factor Charitable Foundation v. Canada*, 2012 FCA 136 at para. 28, 432 N.R. 338.

[15] Thus, for the purposes of the *ETA*, it matters neither how an ordinary person might understand the term "university" nor how that term might be defined in provincial legislation. Rather, what is determinative is whether an institution falls within the statutory definition in the *ETA*. That definition provides in relevant part that a university means a "recognized degree-granting institution" or an organization that operates a "college affiliated with […] such an institution".

[16] On its face, the English version of the first portion of the definition of a "university" in the *ETA* requires that an institution merely be recognized as one that is empowered to grant degrees to qualify as a university.

[17] The respondent argues that the French version might be read in the same way or could be read as providing that it is the institution as opposed to its degree-granting status that must be recognized as the French version of the definition provides that a university means "institution reconnue qui décerne des diplômes, y compris l'organisation qui administre une école affiliée à une telle institution […]". I disagree as it is not clear for what the institution would be recognized other than for its capacity to grant degrees in the French version of the provision; if Parliament meant to convey the idea that what is required is that the institution be recognized as a university, additional words would have been required in the French text to add an expression like "comme telle" after the word "reconnue".

[18] However, even if I were to assume that the French text may also be read as suggested, the meaning that Alexander College urges still must be adopted. When interpreting statutory provisions that appear to differ in their French and English versions, courts often employ the shared meaning rule. Under this rule "the meaning that is shared by the French and English versions is presumed to be the meaning intended by the legislature" (Sullivan at 98). The Supreme Court of Canada in *R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217 [*Daoust*] explained that applying the rule involves two steps. The first step is to determine if there is a shared meaning between the two versions. The Court stated that where one version is clear and the other might be ambiguous, as the respondent argues is the case here, the shared meaning is the version

that is “plain and not ambiguous” (*Daoust* at para. 28). Once a common meaning is identified, the second step is to identify whether that meaning is, “according to the ordinary rules of statutory interpretation, consistent with Parliament’s intent” (*Daoust* at para. 30). For example, a reviewing court should consider the scheme of the legislation to determine if the shared meaning actually expresses the intention of Parliament as reflected elsewhere in the statute: *The Queen v. Cie Immobilière BCN Ltée*, [1979] 1 S.C.R. 865 at pages 872-874, 97 D.L.R. (3d) 238; *Canada (Attorney General) v. Frye*, 2005 FCA 264 at para. 28, 141 A.C.W.S. (3d) 660.

[19] The singular meaning of the English version of the definition, which states that a qualifying institution need merely be recognized as one that is empowered to grant degrees, is encompassed in the French definition, if it is equivocal. Therefore, applying the first step of the shared meaning rule as per *Daoust*, the meaning of the English definition must govern. I believe that this shared meaning is also consistent with the broader scheme of the *ETA* and the intent of Parliament, which I discuss in detail below.

[20] Thus, contrary to what the Tax Court held, I believe it would constitute an impermissible reading-in of additional elements to limit the “university” definition to only those institutions that are recognized as such under provincial law or to those that are empowered to grant baccalaureate degrees or higher.

[21] Indeed, the respondent did not rely on the latter argument before this Court and, in my view, was well-advised to abandon it as the argument stems from the decisions in *Klassen* and *Zailo*, which are wholly inapplicable to the *ETA*. As noted, both cases arose under the *ITA*. The

provisions in the *ITA* that were at issue in *Klassen* and *Zailo* are fundamentally different from those in the *ETA*.

[22] *Klassen* and *Zailo* dealt with the income deduction for tuition fees and the education credit provided for in paragraphs 118.5(1)(*b*) and 118.6(1)(*b*) of the *ITA*, which apply to claims concerning "universit[ies] outside Canada". However, unlike the *ETA*, the *ITA* contains no definition of "university". Moreover, the *ITA* casts the comparable deduction and credit for Canadian institutions in paragraphs 118.5(1)(*a*)(i), 118.5(1)(*c*)(i) and 118.6(1)(*c*) more broadly and makes them applicable not only to universities, but also to "college[s] or other educational institution[s] providing courses at a post-secondary school level". Based on this distinction, this Court and the Tax Court found that a foreign university means an institution granting degrees at the baccalaureate level or higher. Given the entirely different statutory context, this holding is inapplicable under the *ETA*.

[23] Thus, there is no reason to interpret the term "degree" in subsection 123(1) of the *ETA* as being limited to baccalaureate degrees or higher. In the absence of a definition of "degree" in the *ETA*, regard should be given to how the term is defined in provincial legislation as the provinces determine what degrees may be granted by which institutions through their jurisdiction over education. As noted, in British Columbia, the relevant legislation provides for associate degrees, which may be granted both by universities and certain colleges. Thus, to come within the definition of a "university" for purposes of the *ETA*, the institution must be empowered to grant degrees as the same are defined in the relevant provincial legislation.

[24] However, one cannot go on to also tie the definition of a "university" for purposes of the *ETA* to how that term is defined in provincial legislation as the *ETA* defines the term "university". Had Parliament wished to define a "university" for the purposes of the *ETA* to mean only those institutions which are granted such status under provincial law, it would have been easy for it to have so defined the term or to have left it undefined. Parliament chose not to do this but rather elected to tie the definition of a "university" to an institution's recognized ability to grant degrees.

[25] Thus, to come within the definition of "university" within the meaning of subsection 123(1), Part IX of the *ETA* all that is required is that the institution be empowered to grant degrees by a relevant authority such as the province of British Columbia. Alexander College is so authorized. It therefore follows that Alexander College falls within the scope of the exemption in paragraph 7 of Part III, Schedule V of the *ETA*.

[26] Resort to a contextual and purposive analysis to discern the meaning of "university" for purposes of these provisions in the *ETA* leads to the same result for several reasons.

[27] In the first place, as both parties concur, the final reason offered by the Tax Court in footnote 22 to its Reasons is without merit as private universities – which are several in number in British Columbia – find themselves in precisely the same position that Alexander College would be in if it were found to be a "university" within the meaning of subsection 123(1) of the *ETA*. More specifically, these private universities are exempt in terms of enumerated supplies but are not entitled to claim either input tax credits or the public service body rebate. Thus, a similar

result in the case of private colleges like Alexander College cannot be said to be contrary to the scheme of the *ETA*.

[28] Secondly, contrary to what the Tax Court found, there is no reason to view the second portion of the definition of "university" that incorporates affiliated colleges and research bodies as circumscribing the term "institution" to only mean universities as so recognized under provincial legislation. There is nothing necessarily anomalous in a college being affiliated with another college, and there was no evidence before the Tax Court to indicate whether such affiliations have actually occurred. There is accordingly nothing absurd in understanding a "university" to include a degree-granting college because it is possible that such a college might well be affiliated with another college.

[29] Moreover, the term "institution" is used broadly elsewhere in the *ETA* and thus conflicts with the narrowing of the term in the "university" definition adopted by the Tax Court.

[30] For example, the word "institution" is often used in relation to a "financial institution" in Part IX of the *ETA*, which is defined in section 149 to include virtually any person engaged in a financial services business. Similarly, a "public institution" is defined in subsection 123(1), Part IX of the *ETA* as follows:

public institution means a registered charity (within the meaning assigned by subsection 248(1) of the *Income Tax Act*) that is a school authority, a public college, a university, a hospital authority or a local authority determined under paragraph (*b*) of the definition municipality to be a	***institution publique*** Organisme de bienfaisance enregistré, au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu*, qui est une administration scolaire, un collège public, une université, une administration hospitalière ou une administration locale qui a le statut de

municipality.	municipalité aux termes de l'alinéa *b*) de la définition de municipalité.

This definition includes much more than a single type of institution. Likewise, subsection 68.26(*a*) of the *ETA* provides for a partial rebate of Part VI tax to "a school, university or other similar educational institution". Once again, the term "institution" is used broadly in this context to mean any type of organization.

[31] Given the broad way the term "institution" is used elsewhere in the *ETA*, there is no reason to circumscribe it in the definition of "university" in subsection 123(1).

[32] Thirdly, contrary to what the Tax Court found, reading the "university" definition as including a private degree-granting college does not render the listing of a public college in paragraph 7 of Part III, Schedule V of the *ETA* superfluous and thus the interpretation of Alexander College does not offend the presumption against tautology. There is considerable overlap between the various educational suppliers who are covered by the exemptions in Part III, Schedule V of the *ETA* and, therefore, nothing tautological about a supplier coming within more than one definition in the Schedule.

[33] Indeed, this overlap is apparent in the definition of a university, itself. Encompassed within the definition, as noted, are affiliated colleges. These colleges may well be publicly-funded and, if so, are twice mentioned in the provisions – once in the paragraph 7 exemption as a "public college" and again as coming within the definition of "university" in subsection 123(1) of the *ETA* as an affiliated college.

[34] Another example of a similar overlap arises out of the definitions for “public college” and “vocational school”. They are defined as follows:

Part IX Goods and Services Tax, Division I	Partie IX Taxe sur les produits et services, Section I
123(1) In section 121, this Part and Schedules V to X,	123(1) Les définitions qui suivent s’appliquent à l’article 121, à la présente partie et aux annexes V à X.
[…]	[…]
public college means an organization that operates a post-secondary college or post-secondary technical institute	***collège public*** Institution qui administre un collège d’enseignement postsecondaire ou un institut technique d’enseignement postsecondaire qui, à la fois :
(*a*) that receives from a government or a municipality funds that are paid for the purpose of assisting the organization in the ongoing provision of educational services to the general public, and	*a*) reçoit d’un gouvernement ou d’une municipalité des fonds destinés à l’aider à offrir des services d’enseignement au public de façon continue;
(*b*) the primary purpose of which is to provide programs of instruction in one or more fields of vocational, technical or general education.	*b*) a pour principal objet d’offrir des programmes de formation professionnelle, technique ou générale.
Schedule V Exempt Supplies	Annexe V Fournitures exonérées
PART III Educational Services	Partie III, Services d’enseignement
1 In this Part,	1 Les définitions qui suivent s’appliquent à la présente partie.
[…]	
vocational school means an organization that is established and operated primarily to provide students with correspondence courses, or instruction in courses, that develop or	***école de formation professionnelle*** Institution établie et administrée principalement pour offrir des cours par correspondance ou des cours de formation qui permettent à l’étudiant d’acquérir ou d’améliorer une

enhance students' occupational skills.	compétence professionnelle.

[35] Both "public colleges" and "vocational schools" are listed separately in the exemptions in Part III of Schedule V to the *ETA*. For example, paragraph 8 provides:

8 A supply, other than a zero-rated supply, made by a government, a school authority, a vocational school, a public college or a university of a service of instructing individuals in, or administering examinations in respect of, courses leading to certificates, diplomas, licences or similar documents, or classes or ratings in respect of licences, that attest to the competence of individuals to practise or perform a trade or vocation, except where the supplier has made an election under this section in prescribed form containing prescribed information.	8 La fourniture, sauf une fourniture détaxée, effectuée par un gouvernement, une administration scolaire, une école de formation professionnelle, un collège public ou une université, d'un service consistant à donner à des particuliers des cours ou des examens qui mènent à des certificats, diplômes, permis ou documents semblables, ou à des classes ou des grades conférés par un permis, attestant la compétence de particuliers dans l'exercice d'un métier, sauf si le fournisseur a fait un choix en application du présent article en la forme déterminée par le ministre et contenant les renseignements requis par celui-ci.

[36] An institution that receives public funding and operates primarily to provide vocational programming at the post-secondary level would qualify as both a public college and a vocational school.

[37] There is thus no absurdity in the overlap of educational suppliers and no impermissible redundancy in understanding the term "university" in subsection 123(1) of the *ETA* to include a college merely because a "public college" is separately listed in paragraph 7 of Part III, Schedule V to the *ETA*.

[38] Fourthly, the exemptions, which cover school authorities, public colleges, universities and vocational schools, demonstrate an intent to exempt all forms of education from the requirement to charge and remit GST/HST if there is some governmental input into the quality of the programs offered. The definitions of "school authority" and "university" in subsection 123(1), Part IX of the *ETA* build in the requirement to provide instruction to a provincially-regulated standard. The former provides:

school authority means an organization that operates an elementary or secondary school in which it provides instruction that meets the standards of educational instruction established by the government of the province in which the school is operated.	***administration scolaire*** Institution qui administre une école primaire ou secondaire dont le programme d'études est conforme aux normes en matière d'enseignement établies par le gouvernement de la province où l'école est administrée.

Similarly, the university definition requires recognition of the degree-granting status of the institution.

[39] In the case of public colleges, governmental oversight over the quality of the programming is accomplished through the requirement that the institutions receive public funding. Finally, the exemptions relating to vocational schools outlined in paragraphs 6 and 8 of Part III of Schedule V contain within them the requirement that the courses offered lead to recognized accreditations. In addition to paragraph 8, reproduced above, paragraph 6 exempts:

6 A supply of	6 La fourniture, effectuée par une association professionnelle, un gouvernement, une école de formation professionnelle, une université, un collège public ou un organisme de réglementation, des services ou certificats suivants, sauf si le fournisseur fait un choix en

	application du présent article, en la forme déterminée par le ministre et contenant les renseignements requis par celui-ci :
(*a*) a service of instructing individuals in courses leading to, or for the purpose of maintaining or upgrading, a professional or trade accreditation or designation recognized by a regulatory body, or	*a*) un service consistant à donner à des particuliers des cours qui mènent à une accréditation ou à un titre professionnel reconnus par l'organisme ou qui permettent de conserver ou d'améliorer une telle accréditation ou un tel titre;
(*b*) a certificate, or a service of administering an examination, in respect of a course, or in respect of an accreditation or designation described in paragraph (*a*),	*b*) un certificat, ou un service consistant à donner un examen, concernant un cours, une accréditation ou un titre mentionné à l'alinéa *a*).
where the supply is made by a professional or trade association, government, vocational school, university or public college or by the regulatory body, except where the supplier has made an election under this section in prescribed form containing prescribed information.	

[40] This intent is reflected in what the Minister of Finance stated when the provisions were being debated before Parliament. Schedule V to the *ETA* was adopted in 1990 along with other amendments. In respect of the suite of amendments that concerned the taxation of educational services, the Minister of Finance stated as follows:

> Madam Speaker, there is no tax on education. There is no GST on educational services. That is a simple part of the legislation.
>
> (House of Commons Debates, 34th Parl. 2d sess., Vol. 8 (11 May 1990) at 1271 (Hon. Michael Wilson, Minister of Finance))

[41] It is consistent with this purpose that private colleges like Alexander College be exempt from the requirement to collect and remit GST/HST.

[42] Finally, as Alexander College convincingly argues, the interpretation offered by the Tax Court leads to an absurd result. Students taking the same courses at a British Columbia university and Alexander College or pursuing associate degrees at the two institutions would be subject to different tax treatment. Under the Tax Court's interpretation, students would not have to pay GST/HST on their course fees in the former case while in the latter they would. There is no principled basis for such differentiation and, for the reasons discussed above, such a result is not required under a textual, contextual or purposive reading of the relevant provisions. Rather, when properly read, the provisions in issue lead to the conclusion that Alexander College falls within the exemption in paragraph 7 of Part III, Schedule V of the *ETA*.

III. Proposed Disposition

[43] It therefore follows that I would allow this appeal with costs, set aside the judgment of the Tax Court, and, making the decision that the Tax Court ought to have made, would allow the appeal in 2012-3854(GST)G with costs and vacate the assessment dated July 4, 2011 for the reporting period from July 1, 2010 to September 30, 2010.

"Mary J.L. Gleason"
J.A.

"I agree.
Johanne Gauthier J.A"

"I agree.
David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-475-15
STYLE OF CAUSE:	ALEXANDER COLLEGE CORP. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	SEPTEMBER 21, 2016
REASONS FOR JUDGMENT BY:	GLEASON J.A.
CONCURRED IN BY:	GAUTHIER J.A. STRATAS J.A.
DATED:	NOVEMBER 8, 2016

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