Docket: 2018-4345(GST)G

BETWEEN:

WINDSOR ELMS VILLAGE FOR CONTINUING CARE SOCIETY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on April 3, 2023, at Halifax, Nova Scotia

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant:	Maurice P. Chiasson Sara Scott Stephanie Stapleford
Counsel for the Respondent:	Stan McDonald Sam Perlmutter

JUDGMENT

The appeals of the assessments of the Appellant's reporting periods ending between October 1, 2010 and March 31, 2011 are dismissed.

Costs are awarded to the Respondent. The parties shall have until June 5, 2023 to reach an agreement on costs, failing which the Respondent shall have until July 5, 2023 to serve and file written submissions on costs and the Appellant shall have until July 17, 2023 to serve and file a written response. Any such submissions shall not exceed 10 pages in length. If the parties do not advise the Court that they

have reached an agreement and no submissions are received within the foregoing time limits, costs shall be awarded to the Respondent as set out in the Tariff.

Signed at Ottawa, Canada, this 5th day of May 2023.

"David E. Graham"

Graham J.

Citation: 2023 TCC 58
Date: 20230505
Docket: 2018-4345(GST)G

BETWEEN:

WINDSOR ELMS VILLAGE FOR CONTINUING CARE SOCIETY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] The Appellant owns and operates a long-term care facility for seniors. This appeal concerns the proper application of the GST/HST self-supply rules following the construction and initial occupancy of that facility.

[2] The Appellant wishes, in essence, to re-argue the decision of this Court in *High-Crest Enterprises Limited v. The Queen*.[1] The Appellant says that *High-Crest* was wrongly decided. It says that judicial comity does not require me to reach the same conclusion that Justice Jorré reached in that appeal.

[3] For the reasons that follow, I will dismiss the appeal. In all material respects, the facts of this appeal are identical to the facts in *High-Crest*.[2] There is no need for me to consider whether judicial comity requires me to follow *High-Crest* as I entirely agree with Justice Jorré's conclusions. This alone would be a sufficient basis for me to dismiss the appeal.

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1 2017 TCC 210.

2 *High-Crest* involved an addition to an existing long-term care home rather than the construction of a new long-term care home and thus the self-supply occurred under s. 191(4) instead of s. 191(3). This difference is not material.

[4] The following reasons highlight additional concerns that I have with the Appellant's arguments beyond those already covered in *High-Crest*. To the extent that the Appellant has raised an argument that I have not explicitly dealt with below, that is because it has already been dealt with in *High-Crest* and I adopt the reasoning therein.

A. Background

[5] The background to this appeal is relatively straight forward. The parties filed a detailed Partial Agreed Statement of Facts, a copy of which is attached as Schedule "A". The following is a summary of the key facts.

[6] The Appellant had operated a long-term care facility for seniors in Windsor, Nova Scotia for many years. That facility was aging. Rather than renovate the existing facility, the Appellant decided to build a new facility in nearby Falmouth (the "Facility").

[7] The Appellant submitted a proposal to the Nova Scotia Department of Health for the Appellant to build and operate the Facility. The Department of Health accepted the proposal.

[8] The Appellant then signed two agreements with the Department of Health. The first agreement was a Development Agreement. The Development Agreement set out the terms upon which the Appellant was to develop the Facility. Those terms included entering into a second agreement known as the Service Agreement. The Service Agreement set out the services that the Appellant would provide through the Facility and the payments that it would receive from both the Nova Scotia government and the Facility's residents.

[9] The Appellant purchased land for the Facility and began construction. The Facility consisted of 107 long-term care rooms and one respite room. Construction was substantially completed in the autumn of 2010. The first resident moved into the Facility that November.

[10] The Appellant was a GST/HST registrant. It claimed input tax credits of $4,240,937 related to the purchase of the land and the construction of the Facility.

[11] When the first resident moved into the Facility, the Appellant determined that it had had a deemed self-supply of the Facility under subsection 191(3) of the *Excise*

Tax Act. The Appellant reported GST/HST collectible of $2,950,000 on the deemed self-supply.

[12] If certain conditions are met, section 191.1 deems the GST/HST collectible on a self-supply under subsection 191(3) to be equal to the input tax credits claimed by the registrant during construction. The Minister of National Revenue concluded that those conditions had been met. The Minister also concluded that the Appellant had reported the self-supply in the wrong reporting period.

[13] The Minister assessed the Appellant to move the self-supply from the Appellant's reporting period from January 1 to March 31, 2011 to its reporting period from October 1 to December 31, 2010. The Minster also applied section 191.1 to increase the GST/HST collectible on the self-supply to equal the $4,240,937 in input tax credits that the Appellant had claimed.

[14] The Appellant has appealed those assessments.[3]

B. Issue

[15] The sole issue is whether section 191.1 applies to deem the GST/HST collectible on the self-supply to be equal to the input tax credits claimed by the Appellant.

C. Deeming Provisions

[16] Sections 191 and 191.1 are both deeming provisions. Section 191 deems a self-supply to have occurred if certain conditions are met. Section 191.1 deems a certain amount of GST/HST to have been collected on that self-supply if certain further conditions are met.

[17] While section 191 can apply on its own, section 191.1 only applies if section 191 has first applied. Therefore, to determine whether section 191.1 applies in the Appellant's case, it is important to first understand how section 191 came to apply to the Facility.

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[3] The Appellant appealed both reporting periods. It appears that the Appellant must have appealed the reporting period from January 1 to March 31, 2011 out of an abundance of caution as nothing in the assessment of that period is in dispute.

D. Section 191

[18] The parties agree that there was a deemed self-supply from the Appellant (as the builder of the Facility) to the Appellant (as the operator of the Facility) pursuant to subsection 191(3).

[19] In the reporting periods in issue, the relevant portions of subsection 191(3) read as follows:

> 191(3) For the purposes of this Part, where
>
> > *(*a*)* the construction…a multiple unit residential complex is substantially completed,
> >
> > *(*b*)* the builder of the complex
> >
> > > (i) gives, to a particular person … possession or use of any residential unit in the complex under a lease, licence or similar arrangement entered into for the purpose of the occupancy of the unit by an individual as a place of residence,
> >
> > …, and
> >
> > *(*c*)* …the particular person…is the first individual to occupy a residential unit in the complex as a place of residence after substantial completion of the construction or renovation,
> >
> > the builder shall be deemed
> >
> > *(*d*)* to have made and received, at the later of the time the construction or substantial renovation is substantially completed and the time possession or use of the unit is so given to the particular person or the unit is so occupied by the builder, a taxable supply by way of sale of the complex, and
> >
> > *(*e*)* to have paid as a recipient and to have collected as a supplier, at the later of those times, tax in respect of the supply calculated on the fair market value of the complex at the later of those times.

[20] In the circumstances of this appeal, the following tests must have been met for subsection 191(3) to apply. The parties agree that all of these tests were met.

(a) Multiple Unit Residential Complex: The Facility must have been a "multiple unit residential complex". The term "multiple unit residential

complex" is defined in subsection 123(1) as a "residential complex" that contains more than one "residential unit". The terms "residential complex" and "residential unit" are also defined in subsection 123(1).

(i) Residential Unit: The definition of "residential unit" includes a room in a residence for seniors that has never been used or occupied but is intended to be used as a place of residence for individuals. This describes the state of the rooms in the Facility immediately before occupation.

(ii) Residential Complex: In simple terms, a "residential complex" is that part of a building in which one or more residential units are located together with the underlying land and related common areas.

In summary, the Facility consisted of 108 residential units that, together, formed a residential complex which was, in turn, a multiple unit residential complex.

(b) Builder: The Appellant must have been the "builder" of the Facility. The term "builder" is defined in subsection 123(1). In simple terms, the Appellant was the builder of the Facility because it had an interest in the real property on which the Facility was situated and either constructed the Facility or hired someone else to do so for it.

(c) Substantial Completion: Construction of the multiple unit residential complex must have been substantially complete. This occurred in the final quarter of 2010.

(d) Possession or Use: The Appellant must have given possession or use of one of the residential units in the Facility to a particular person under a lease, licence or similar arrangement. This occurred in November 2010.

(e) Purpose of Occupancy as a Place of Residence: The lease, licence or similar arrangement must have been entered into "for the purpose of the occupancy of the unit by an individual as a place of residence".

(f) First Occupancy: The person who was given possession or use of the residential unit under the lease, licence or similar arrangement must have

> been the first individual to occupy a residential unit in the complex as a place of residence after substantial completion of the construction.

[21] Because all of these tests were met, the Appellant was deemed to have made and received a taxable supply by way of sale of the Facility and to have paid as a recipient and collected as a supplier tax in respect of that supply. In other words, the Appellant was deemed to have supplied the Facility to itself. Absent subsection 191.1, that supply would be deemed to have occurred at fair market value.

E. Section 191.1

[22] The purpose of section 191.1 is to prevent builders who have benefited from government funding from ending up better off financially from the self-supply rules than they would have if the rules did not exist. As described by Justice Jorré, section 191.1 "seeks to deny a net tax refund on the self-supply by bumping up the [GST/HST collectible] where there is government support for the provision of residential accommodation to the groups of individuals described in the section."[4]

[23] In the reporting periods in question, the relevant parts of section 191.1 read as follows:

> 191.1(1) The definitions in this subsection apply in this section.
>
> > "government funding", in respect of a residential complex, means an amount of money (including a forgivable loan but not including any other loan or a refund or rebate of, or credit in respect of, taxes, duties or fees imposed under any statute) paid or payable by
> >
> > > (*a*) a grantor…
> > >
> > > …
> >
> > to a builder of the complex…for the purpose of making residential units in the complex available to individuals referred to in paragraph (2)(*b*).
> >
> > "grantor" means
> >
> > > (*a*) a government…
> > >
> > > …

[4] *High-Crest* at para. 76.

(2) For the purposes of subsections 191(1) to (4), where

> (*a*) a builder of a residential complex…is deemed under any of subsections 191(1) to (4) to have, at any time, made and received a supply of the complex…,
>
> (*b*) possession or use of at least 10% of the residential units in the complex is intended to be given for the purpose of their occupancy as a place of residence or lodging by
>
> > (i) seniors,
> >
> > …, and
>
> (*c*)…the builder, at or before that time, has received or can reasonably expect to receive government funding in respect of the complex,

the amount of tax in respect of the supply calculated on the fair market value of the complex…is deemed to be equal to the greater of

> (*d*) the amount that would, but for this subsection, be the tax calculated on that fair market value, and
>
> (*e*) the total of all amounts each of which is tax that was payable by the builder in respect of
>
> > (i) real property that forms part of the complex or addition, as the case may be, or
> >
> > (ii) an improvement to that real property.

[24] In the circumstances of this appeal, the following tests must have been met for section 191.1 to apply:

(a) Deemed Self-Supply: The Appellant must have been deemed to have made a self-supply of the Facility under subsection 191(1) to (4). As set out above, the parties agree that this test is met. The Appellant was deemed to have made a self-supply under subsection 191(3).

(b) Possession or Use by Seniors: The Appellant must have given possession or use of at least 10% of the residential units in the Facility to seniors. The parties agree that this test is met.

(c) For the Purpose of Occupancy as a Place of Residence: The Appellant must have given possession or use of those residential units to the seniors "for the purpose of their occupancy as a place of residence". The Appellant says this test has not been met.

(d) Government Funding: There must have been "government funding" of the Facility. That term is defined in subsection 191.1(1). In the circumstances of this appeal, "government funding" means an amount of money paid or payable by a "grantor" to a builder of a residential complex "for the purpose of making residential units in the complex available" to seniors. The Appellant says this test has not been met. The parties agree that the government of Nova Scotia acting through the Department of Health is a "grantor". They agree that the Department of Health paid substantial sums to the Appellant each year under the Service Agreement. However, the Appellant argues that the Department of Health did not make those payments for the purpose of making residential units available to seniors.

(e) Receipt or Expectation of Receipt: At or before the time of the self-supply, the Appellant must have reasonably expected to receive the government funding in respect of the Facility. The Appellant says that it expected to receive money from the Department of Health under the Service Agreement but that those payments were not in respect of the Facility.

[25] As set out above, the dispute between the parties arises from the last three tests. The Appellant submits that none of these tests is met. It says that the purpose of giving seniors possession or use of a room in the Facility was to provide them with long-term health care services, not to provide them with a place of residence.

[26] I will deal with these three tests separately.

F. Government Funding

[27] The Appellant's argument that there was no government funding is based on the distinction between single supplies and multiple supplies. The Appellant argues that it made a single supply of health care services which included an incidental supply of accommodation, not two different supplies - one of health care services and one of accommodation. Therefore, the Appellant argues that the payments it received from the Department of Health can only have been for health care services.

[28] I disagree with the Appellant's argument for two reasons:

(a) the supply in question is the self-supply under section 191, not the supply or supplies that the Appellant made following that self-supply; and

(b) the definition of "government funding" requires me to look at the purpose of the payment of an amount of money to the Appellant, not the purpose of the payment of all monies paid to the Appellant.

The Supply is the Self-Supply

[29] As set out above, section 191.1 is not a stand-alone provision. It applies to determine the amount of GST/HST collectible on a self-supply under section 191.

[30] It does not matter what supplies the Appellant made to the Department of Health after the self-supply. Those supplies are not in issue. The only supply in issue is the self-supply of the Facility from the Appellant to itself.

[31] The Appellant acknowledges this fact but argues that, to determine the purpose of the government funding, I must examine what the Department of Health was paying for. The Appellant argues that the Department of Health was paying for the supplies that the Appellant made after the self-supply and that I therefore have to examine those supplies in order to determine the purpose of the payments that the Appellant received. The Appellant says that, following the self-supply, the Appellant began making a single supply of health care services to the Department of Health and that its supply of accommodation was incidental to that supply.

[32] Most of the Appellant's evidence at trial was devoted to proving that its supplies to the Department of Health were a single supply of health care services with an incidental supply of accommodation rather than multiple supplies.[5]

[33] I do not have to determine whether, after the self-supply, the Appellant began making single supplies or multiple supplies to the Department of Health and I decline to do so. Even if the Appellant made a single supply of health care services

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[5] I have not detailed that evidence in these reasons as it has no bearing on the outcome. I will note, however, that I found the Appellant's witness, Donald van Nostrand, to be credible.

after the self-supply, for the reasons set out below it would not change my conclusion that it received government funding.

Payment of "an amount of money"

[34] As set out above, "government funding" is defined to mean an amount of money paid or payable by a grantor to a builder of a residential complex for the purpose of making residential units in the complex available to seniors.

[35] The Appellant argues that, because it made a single supply of health care services to the Department of Health, the purpose of the payments it received from the Department of Health can only have been to pay for health care services. This argument is based on an inaccurate reading of the definition of "government funding".

[36] This same argument was made by the taxpayer in *High-Crest*. Justice Jorré rejected it. He concluded that the requirements of section 191.1 are met so long as part of the amounts received are for the purpose of making residential units available:[6]

> It would not make sense to read [section 191.1] as not applying to government support simply because, there were, as is the case here, combined payments providing government support both for the provision of residential accommodation together with government support for additional services such as nursing services. Government support for residential accommodation is not diminished by the payment of additional amounts in support of other purposes.
>
> [footnotes omitted]

[37] I agree with Justice Jorré. The definition of "government funding" refers to "an amount of money" paid or payable to a builder. There is no need for me to examine the purpose of every payment that the Department of Health made. So long as some portion of the total payments that the Department of Health made to the Appellant were made for the purpose of making residential units in the Facility available to seniors, the test is met.

[38] There is no question that at least some of the amounts that the Department of Health paid to the Appellant under the Service Agreement were made for that

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6 High-Crest, at paras. 77 and 78.

purpose. The very definition of "services" in that agreement includes accommodation.[7]

[39] In particular, certain payments under the Service Agreement cover all principle and interest on the mortgage that the Appellant used to finance the construction of the Facility. Thus, over the 25-year life of the Service Agreement, the Department of Health will pay the entire cost of building the Facility.

[40] In addition, through annual payments called the capital renewal reserve, the Department of Health continues to pay for ongoing costs of maintaining the Facility such as replacing the roof.

[41] In the circumstances, I have no trouble concluding that a portion of the money that the Department of Health paid to the Appellant was paid for the purpose of making the residential units in the Facility available to seniors and was therefore "government funding".

G. In Respect of the Facility

[42] As set out above, paragraph 191.1(2)(c) requires that, at or before the time of the self-supply, the Appellant must have reasonably expected to receive the government funding in respect of the Facility.

[43] The Appellant argues that the funding was not in respect of the Facility. I do not see how funding that will ultimately cover the entire cost of constructing the Facility could not be said to be in respect of the Facility.

[44] Having concluded that the Appellant received government funding in respect of the Facility, I have no difficulty in concluding that the test in paragraph 191.1(2)(c) is met. The Appellant signed the Service Agreement before construction began. Therefore, both at and before the time of the self-supply, the Appellant could reasonably expect to receive the government funding.

H. Purpose of Occupancy as a Place of Residence

[45] The Appellant also argues that the purpose test in paragraph 191.1(2)(b) is not met. The Appellant's argument relies on reading paragraph 191.1(2)(b) in isolation.

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[7] Exhibit J-1, tab 10, pg 322. It is also interesting to note that the Service Agreement defines the individuals to whom the services are provided as "residents" not "patients".

Reading it within the context of subsection 191(3) shows the flaw in the Appellant's reasoning.

[46] Paragraph 191.1(2)(b) requires that possession or use of at least 10% of the residential units in the Facility must have been intended to be given to the seniors "for the purpose of their occupancy as a place of residence" by the seniors. The Appellant says that use or possession of the residential units was given to the seniors for the purpose of receiving health care services, not for the purpose of their occupancy as a place of residence. But if that is the case, then why was there a self-supply in the first place?

[47] As set out above, for there to have been a self-supply, the rooms in the Facility have to have been "residential units". In other words, they have to have been rooms in a residence for seniors that had never been used or occupied but were intended to be used as a place of residence for individuals. Furthermore, to meet the requirements of subparagraph 191(3)(b)(i), possession or use of the rooms must have been given to a senior for the purpose of the occupancy of the unit by the senior as a place of residence. By agreeing that there was a self-supply, the Appellant necessarily agrees that both of these tests were met. How then can the Appellant claim that the test in paragraph 191.1(2)(b) is not met because possession or use of the rooms was not intended to be given for the purpose of their occupancy as a place of residence by seniors?

[48] The Appellant wants me to accept that the rooms were intended to be occupied as a place of residence for seniors and that possession or use of the rooms was given to seniors for the purpose of occupancy as a place of residence but, at the same time, that possession or use of the rooms was not intended to be given to the seniors for the purpose of their occupancy as a place of residence by the seniors. The absurdity of this position is self-evident.

[49] There are two possibilities. Either:

(a) the rooms were never intended to be occupied by a senior as a place of residence (because they were always intended to be incidental to a single supply of health care services) in which case the purpose tests in both

subsection 191(3) and paragraph 191.1(2)(b) are not met and there was no self-supply and no entitlement to input tax credits;[8] or

(b) the rooms were always intended to be occupied by a senior as a place of residence in which case the purpose tests in both subsection 191(3) and paragraph 191.1(2)(b) are met and there was both the entitlement to input tax credits that comes from carrying on the commercial activity of building the Facility and a self-supply where tax equal to those input tax credits was collected.

[50] The Appellant is trying to have its cake and eat it too. When its entitlement to input tax credits is on the line, it wants to have built the Facility for seniors to occupy as a place of residence but when it comes to paying the corresponding tax, it wants to have built the Facility for the purpose of providing health care services. The Appellant cannot have it both ways.

I. Conclusion

[51] Based on all the foregoing, the appeals of the assessments of the Appellant's reporting periods ending between October 1, 2010 and March 31, 2011 are dismissed.

[52] Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 5th day of May 2023.

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[8] To be clear, I am in no way endorsing the idea that subsection 191(3) would not have applied to the Appellant's construction of the Facility. That issue was not before me. The self-supply system as it is currently understood allows builders of long-term care homes to obtain input tax credits during construction. That presumably assists the builders with their cashflow during construction. I have no desire to introduce uncertainty to that well-established system. I have raised the point for the sole purpose of pointing out the fatal flaw in the Appellant's argument.

"David E. Graham"

Graham J.

Schedule "A"

2018-4345(GST)G

TAX COURT OF CANADA

BETWEEN:

WINDSOR ELMS VILLAGE FOR CONTINUING CARE SOCIETY

APPELLANT

and

HIS MAJESTY THE KING

RESPONDENT

PARTIAL AGREED STATEMENT OF FACTS

For the purposes of this appeal, the parties admit the following facts and agree that their admission of facts shall have the same effect as if the facts had been proved formally and accepted by the Court as true. The parties each reserve the right to adduce additional evidence which is relevant and probative of any issue before the Court and which is not inconsistent with the facts admitted herein.

It is also agreed that the admission of these facts is not a concession of the weight or degree of relevance to be attributed to these facts.

The parties agree to the following facts:

1. The Appellant is a charity for purposes of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the "**Act**").

2. The Appellant is a Goods and Services Tax/Harmonized Sales Tax ("**GST/HST**") registrant and was a GST/HST registrant as of April 1, 2009.

3. As a charity, the Appellant is entitled to rebates pursuant to section 259 of the Act.

4. The Appellant owns and operates a long-term care facility for seniors in Falmouth, Nova Scotia (the "**Facility**").

5. At least 10% of the residents of the Facility are seniors.

6. The Facility contains 107 long term care rooms and one respite room and provides services for its residents, including nursing care, food services, housekeeping, physiotherapy, and occupational therapy.

7. The Facility serves the greater Windsor area in Hants County, Nova Scotia, and operates under the name "Windsor Elms Village".

8. Prior to the construction of the Facility, the Appellant operated a similar facility in Windsor, Nova Scotia for over 40 years.

9. Like the current facility, the prior facility was called "Windsor Elms", contained 108 long term care beds, provided substantially similar services (at least at the end of its existence), and served the same geographical area

10. The Nova Scotia Department of Health ("**NSDOH**") has a responsibility to deliver health care services to its citizens, including the provision of long-term nursing care to qualified individuals.

11. The NSDOH can choose to supply its services itself or engage third party providers.

12. On or about May 2007, the Appellant submitted a proposal to build a new facility in Falmouth, Nova Scotia (previously defined as the Facility) containing 107 long term care rooms and one respite room to replace the 108 long term care beds at its existing facility in Windsor.

13. In July 2007, the Appellant was informed by NSDOH that its proposal had been accepted.

14. On April 11, 2008, the Appellant purchased land in Falmouth, Nova Scotia, for a purchase price of $300,000 (the "**Property**"). An amount of $39,000 was paid as GST/HST on the purchase of this land. This amount was allowed by the Minister as an input tax credit ("**ITC**").

15. The Appellant began construction on the Facility on the Property in 2008.

16. On or about May 8, 2008, the NSDOH provided an advance to the Appellant in the amount of $871,711 (the "**NSDOH Loan**") to cover the costs of planning, designing, and building the Facility (Joint Book of Exhibits ("**JBE**"), **Tab** 7).

17. The Appellant and the Province of Nova Scotia (the "**Province**") entered into a Development Agreement dated April 27, 2009 with respect to the development of the Facility by the Appellant (the "**Development Agreement**") (JBE, Tab 14).

18. The Appellant and the Province entered into a Service Agreement dated April 15, 2009 (the "**Service Agreement**") with respect to the provision of services by the Appellant at the Facility (JBE, Tab 10).

19. The Service Agreement provides for regular payments or Annual Funding from the Province to the Appellant.

20. Annual Funding is provided through per diem payments which are intended to compensate the Appellant for all of its operating costs and are broken down into two components:

    (a) the Protected Envelope - that portion of the Approved Budget for Health Care Costs and Raw Food Costs (see Schedule D, JBE, Tab 11); and

(b) the Unprotected Envelope - the portion of the Approved Budget for facility and Accommodation Services Costs (see Schedule E, JBE, Tab 12).

21. In addition to the per diem payments, the Annual Funding also includes an amount for the Capital Renewal Reserve which is received and invested to maintain the Facility through the term of the Service Agreement (see Schedule F, JBE, Tab 13).

22. The Unprotected Envelope includes the principal and interest related to the capital costs of the Facility.

23. Through the payments received under the Service Agreement, the Appellant expected to receive sufficient funding to cover the operational and capital costs of the Facility.

24. The Appellant entered into a mortgage with Nova Scotia Housing Development Corporation ("**NSHDC**") dated July 29, 2009 (the "**Mortgage**") to finance the construction of the Facility (JBE, Tab 16).

25. On or about August 18, 2009, NSHDC made the first advance under the Mortgage, totalling $7,603,027.

26. Of the funds advanced by NSHDC under the Mortgage on or about August 18, 2009, $871,711 was paid to the Nova Scotia Department of Community Services to repay the NSDOH Loan.

27. During the construction of the Facility, the Appellant was engaged in commercial activity and was entitled to claim input tax credits ("**ITCs**") in the amount of $4,240,937.24 on its GST/HST returns, filed on a quarterly basis, relating to the costs of construction.

28. Construction of the Facility was substantially completed by fall 2010. The residents moved into the Facility on November 23, 2010.

29. After the completion of construction, the Appellant's operation of the Facility was an exempt activity for purposes of the Act.

30. The Appellant calculated the GST/HST owing under sec. 191 of the Act based on self-supply of the Facility to be $2,950,000 and reported that amount in its GST/HST return for the period ending on March 31, 2011.

31. The Minister assessed the Appellant by Notice of Assessment, dated November 29, 2012, in respect of net tax, interest, and failure to file penalties for the periods of October 1, 2010 to March 31, 2011 (JBE, Tab 26). The assessment was based on the application of sec. 191.1 of the Act which, if applicable, would increase the self-assessment amount to $4,240,937.24, being the amount of the ITCs allowed by the Minister on audit.

32. A Notice of Objection was filed on January 3, 2013 (JBE, Tab 27). The Appellant requested that the decision on the Appellant's Objection be held in abeyance pending the outcome of another appeal involving section 191.1 of the Act.

33. By Notice of Confirmation dated August 6, 2018, the Minister confirmed the assessment (JBE, Tab 31).

DATED at Halifax, Nova Scotia this 13th day of December, 2022.

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COURT FILE NO.:	2018-4345(GST)G
STYLE OF CAUSE:	WINDSOR ELMS VILLAGE FOR CONTINUING CARE SOCIETY v.HIS MAJESTY THE KING
PLACE OF HEARING:	Halifax, Nova Scotia
DATE OF HEARING:	April 3, 2023
REASONS FOR JUDGMENT BY:	The Honourable Justice David E. Graham
DATE OF JUDGMENT:	May 5, 2023

APPEARANCES:

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Counsel for the Respondent:	Stan McDonald Sam Perlmutter

COUNSEL OF RECORD:

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