

BETWEEN:

CHAMPLAIN COLLEGE OF VERMONT- MONTREAL CAMPUS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard on September 20, 2022, at Montreal, Quebec.

Before: The Honourable Justice Sylvain Ouimet

Appearances:

Counsel the Appellant:

Bobby B. Solhi

Elizabeth Egberts

Counsel for the Respondent:

Normand Perreault

Brigitte Landry

ORDER

UPON the motion for particulars filed by the Applicant on December 17, 2021 and the amended motion to strike filed by the Applicant on July 13, 2022, requesting:

1. An order compelling the Respondent to provide particulars on paragraphs 7, 16-19, 32(g), 32(i), 32(1), 32(m), 32(u), 32(v), 32(w), 32(z), 41.1, 47, and 43-50 of the Amended Reply pursuant to section 52 of the *Tax Court of Canada Rules (General Procedure)*;

2. An order to strike out paragraphs 16-19, 32(g), 32(i), 32(1), 32(u), 32(v), 32(w), 32(z), 41.1 and 43-50 of the Amended Reply pursuant to section 53 of the *Tax Court of Canada Rules (General Procedure)*; and

3. An assessment of costs against the respondent;

AND UPON agreement from the parties;

IT IS ORDERED THAT:

1. The motion for particulars with respect to paragraphs 7, 32(g), 32(i), 32(1), 32(u), 32(z), 47 and 43-50 of the Amended Reply is allowed in accordance with the attached Schedule "A".
2. The motion to strike with respect to paragraphs 16-19, 32(v), 32(w), and 41.1 of the Amended Reply is allowed in accordance with the attached Schedule "A".
3. The Respondent shall, within 30 days from the date of this Order, provide the particulars and amend the Amended Reply as specified in the attached Schedule "A".
4. Costs will be in the cause.

Signed at Ottawa, Canada, this 6th day of October 2022.

"Sylvain Ouimet"

Ouimet J.

Schedule "A"

No.	Para. of the Reply	Requested Particulars	Agreement Between The Parties
1.	7. As to paragraph 18 of the notice of appeal, he <u>denies sub-paragraph (i)</u> and has no knowledge of sub-paragraphs (ii), (iii) and (iv);	Please provide particulars of the denial. Is the entire sentence denied or a particular part?	The Minister will provide particulars.
2.	16. He [...] <u>denies</u> paragraph 34 of the notice of appeal;	Paragraph 34 sets out the Statutory Provisions Relied on by the Appellant. Please provide particulars of the denial, as the Appellant is entitled and expected under the Rules to set out in the Notice of Appeal all provisions in which it relies in support of its appeal.	The Minister will amend the Amended Reply to strike paragraph 16 in its entirety and insert the following: "Paragraphs 34 to 44 of the Notice of Appeal consist of argument and contain no allegations of fact to admit, deny or state no knowledge of. If there are any allegations of fact, they are denied."
3.	17. He denies paragraphs 35, 36, 37, and 38 of the notice of appeal	Please clarify and identify which portions of the Reasons that the AGC claims are allegations of fact, which he denies. The Appellant is entitled to and expected to set out its Reasons for appeal as per the Rules.	The Minister will amend the Amended Reply to strike paragraph 17 in its entirety and insert the following: "Paragraphs 34 to 44 of the Notice of Appeal consist of argument and contain no allegations of fact to admit, deny or state no knowledge of. If there are any allegations of fact, they are denied."
4.	18. As to paragraph 39, he relies on the law and denies everything else that is not consistent with the law	Please clarify and identify which portions of the Reasons that the AGC claims are allegations of fact which he denies. The Appellant is entitled to and expected to set out its Reasons for appeal as per the Rules.	The Minister will amend the Amended Reply to strike paragraph 18 in its entirety and insert the following: "Paragraphs 34 to 44 of the Notice of Appeal consist of argument and contain no allegations of fact to admit, deny or state no knowledge of. If there are any allegations of fact, they are denied."
5.	19. He denies paragraphs 40,41,42,43 and 44 of the section called "V II. REASONS THE APPELLANT INTENDS TO	Please clarify and identify which portions of the Reasons, which the AGC claims are allegations of fact and which it denies. The Appellant is entitled to and	The Minister will amend the Amended Reply to strike paragraph 19 in its entirety and insert the following:

	RELY ON” of the notice of appeal...	expected to set out its Reasons for appeal as per the Rules.	“Paragraphs 34 to 44 of the Notice of Appeal consist of argument and contain no allegations of fact to admit, deny or state no knowledge of. If there are any allegations of fact, they are denied.”
6.	<u>32(g). [...] among the services provided to Champlain College of Vermont, the Appellant administrated the Montreal facilities and ran the operations of the Montreal facilities;</u>	Please provide particulars regarding the term “among the services” in this context. Further clarification as to the specific services would assist the Appellant to understand the Respondent’s basis for assessment and underlying assumptions.	The Minister will provide particulars within 30 days. Further, the Minister will amend the Amended Reply to confirm that the Minister did not consider the provision of any services outside of those specifically listed in paragraphs 32(g), 32(h), and 32(i).
7.	<u>32(g). [...] among the services provided to Champlain College of Vermont, the Appellant administrated the Montreal facilities and ran the operations of the Montreal facilities;</u>	Please provide particulars regarding the term “administrated” in this context. What exactly does the Respondent mean by this term and its application to the Minister’s assumption of facts.	The Minister will provide particulars.
8.	<u>32(i). [...] in addition to maintaining and managing the Montreal campus building, the Appellant offered many services to Champlain College of Vermont which included: the presentation of teachers to Champlain College of Vermont, providing support to Champlain College of Vermont both on an administrative level and on an operational level, measures insuring the students safety; providing a student placement service allowing students to complete internships in business and providing students with support during off-campus activities</u>	Please confirm whether “maintaining and managing the Montreal campus building” in this context refer to the specific services outlined in subparagraph 32(g) of the Reply? Are there other services that were omitted by the Respondent?	The Minister will provide particulars.
9.	<u>32(i). [...] in addition to maintaining and managing the Montreal campus building, the Appellant offered many services to Champlain College of Vermont which included: the</u>	Please provide particulars regarding the term “presentation of teachers” in this context. What does this mean exactly and please provide specifics of this	The Minister will provide particulars.

	<p><u>presentation of teachers to Champlain College of Vermont, providing support to Champlain College of Vermont both on an administrative level and on an operational level, measures insuring the students safety; providing a student placement service allowing students to complete internships in business and providing students with support during off-campus activities</u></p>	<p>service as assumed by the Respondent.</p>	
10.	<p>32(i). [...] <u>in addition to maintaining and managing the Montreal campus building, the Appellant offered many services to Champlain College of Vermont which included: the presentation of teachers to Champlain College of Vermont, providing support to Champlain College of Vermont both on an administrative level and on an operational level, measures insuring the students safety; providing a student placement service allowing students to complete internships in business and providing students with support during off-campus activities</u></p>	<p>Please provide particulars regarding the administrative and operational support that is the Respondent asserts was provided by the Appellant to CCV.</p>	<p>The Minister will provide particulars.</p>
11.	<p>32(i). [...] <u>in addition to maintaining and managing the Montreal campus building, the Appellant offered many services to Champlain College of Vermont which included: the presentation of teachers to Champlain College of Vermont, providing support to Champlain College of Vermont both on an administrative level and on an operational level, measures insuring the students safety; providing a student placement service allowing students to complete internships in business and providing students with</u></p>	<p>Please clarify whether it is the Respondent's position that services set out in paragraph 32(i) are in relation to real property in Canada or otherwise.</p>	<p>The Minister will provide particulars.</p>

	<u>support during off-campus activities</u>		
12.	32(l). the Appellant did not receive tuition fees from Champlain College of Vermont students, as Champlain College of Vermont is responsible for the study programs;	Please provide particulars regarding the term “receive” as used in this context. Please also clarify and provides particulars with respect to the assertion that CCV was responsible for the “study programs”. Please specify the particular services that related to the study program as oppose to services otherwise than for the study programs?	The Minister will provide particulars. Further, the Minister will amend the Amended Reply to admit the facts set out at paragraphs 10 and 14 of the Applicant’s Notice of Appeal.
13.	32(m). the Appellant did not offer educational services as they are offered by Champlain College of Vermont	Please provide particulars regarding the Respondent’s use of the term “educational services”. Please clarify the services that are educational versus other non-educational services.	The Minister will amend the Amended Reply to strike paragraph 32(m) in its entirety.
14.	32(u). through the Appellant’s facility in Montreal, Champlain College of Vermont made [...] <u>the provision of services</u> in the ordinary course of its business;	Please provide particulars regarding the use of phrase “provisions of services”. Please clarify all “services” and to whom those services were render.	The Minister will provide particulars.
15.	32(v). The Minister’s auditor concluded that Champlain College of Vermont had a permanent establishment in Canada (i.e., the Appellant’s facility located at 525, Sherbrooke Est street, Montreal, Quebec, Canada H2L 1K2) through where it carried it activities.	Please provide particulars regarding the reference to Minister’s conclusion and specify the facts that the Minister replies upon in support of this assertion. Please also provide the activities that the Minister alleges were carried on by CCV through the premises in Sherbrook.	Paragraph 32(v) has been struck in its entirety.
16.	32(w). [...] <u>the Appellant provided to Champlain College of Vermont real property in Canada in the province of Quebec or services in relation to real property in Canada in the province of Quebec and also provided to Champlain College of Vermont general services in</u>	As these appear to represent conclusions of law, or mixed fact and law, please provide particulars regarding whether this is more appropriately identified as argument or conclusion. Otherwise please provide particulars regarding the materials facts upon which this allegation is based.	The Minister will amend the Amended Reply to strike paragraph 32(w) in its entirety.

	<u>Canada in the province of Quebec</u>		
17.	32(z). [...] the Appellant [...] <u>did not charge the GST on the value of the consideration and did not collect the GST [...] in the amount of \$193,916.15...</u>	Please provide particulars regarding the term “value of consideration” as used in the context. “Value of consideration” is a defined term in the ETA, which creates confusion and may represent a deficient pleading.	The Minister will provide particulars.
18.	43-50. Section titled “Supplies of general services – Place of supplies & Taxable supplies”	Please provide particulars as to whether these paragraphs (43-50) present an <i>alternative</i> argument being advanced by the Respondent and, if so, which of the ‘services’ does the Respondent allege that this argument applies.	The Minister will provide particulars.
19.	47. Champlain College of Vermont had a permanent establishment in Canada, in the province of Quebec;	Please provide particulars regarding this allegation. Please explain on what facts the Respondent relies to support this assertion.	The Minister will provide particulars.
20.	41.1. <u>The supplies of real property or of services in relation to real property were not “not subject” to GST;</u>	Please provide particulars of the AGC’s position and clarify the meaning of ‘not “not subject” to GST’.	The Minister will amend the Amended Reply to strike paragraph 41.1 in its entirety.