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NEW BRUNSWICK'S TAX SYSTEM REVIEW: DISCUSSION PAPER RELEASED

By: Theo Anne Opie, LL.B. © CCH Canadian Limited.

The 2008 New Brunswick Budget of March 18, 2008, presented by Finance Minister Victor Boudreau, included a commitment to undertake a review of the New Brunswick Tax System. See the Budgets and New Developments section at ¶180,164.

In June 2008, Finance Minister Victor Boudreau tabled a *Discussion Paper on New Brunswick's Tax System Review*. The paper represents the most comprehensive review of the province's tax system in nearly two decades and presents a series of options to restructure New Brunswick's tax system.

A select committee of the legislature will hold public meetings and stakeholder consultations throughout the province. As well, individuals are encouraged to comment on the options by submitting an e-mail. The committee will present its report to government in the fall of 2008. Once the report from the select committee is submitted, New Brunswick will develop a five-year plan to ensure that major changes to the tax system over the five-year period are fiscally neutral through a combination of tax reductions, tax adjustments, and management of expenditure growth. This plan would see new tax measures begin to be put in place in 2009-2010, with full implementation by the 2013-2014 fiscal year.

The full Discussion Paper and the e-mail link to submit comments can be found online at the following New Brunswick Department of Finance Web Site: www.gnb.ca/0162/New_Brunswick_Tax_System/index-e.asp.

The following is a summary of the options presented in the Discussion Paper.

Inside

Key Objectives and Areas Under Consideration

There are two primary objectives behind the Discussion Paper on tax restructuring:

- To ensure New Brunswickers can keep even more of their hard-earned dollars to save and invest.
- To make the province more attractive for business, investment and people by establishing a tax structure that is more competitive globally, resulting in job creation, income generation, and a bright future for New Brunswickers.

The options under consideration fall into five primary categories, each of which is summarized below.

Reducing and simplifying personal income tax

The Discussion Paper outlines two options for reducing New Brunswick's provincial personal income tax while simplifying the system. Both would continue to use a single federal–provincial tax return, and the federal government would continue to determine taxable income for both federal and provincial income tax purposes. The key difference from the present system would be a reduction in rates and in the number of tax brackets.

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The first option is the flat tax option. This approach would reduce the number of brackets from four to one with one marginal tax rate of 10% for all taxable income levels. It would maintain a progressive tax structure, since tax paid as a percentage of income would increase as income increases. A 10% single tax rate would give New Brunswick one of the lowest overall personal income tax rates in Canada, on par with the rate now levied in Alberta.

The second option would replace the existing four-rate, four-bracket personal income tax structure with two rates and two brackets. Under this option, the two rates would be 9% and 12%, with the 12% rate starting at $35,000 of taxable income.

Supporting New Brunswick families

New Brunswick currently provides benefits to families primarily through three refundable tax credits: the New Brunswick Child Tax Benefit, the New Brunswick Working Income Supplement and the New Brunswick Low Income Seniors' Benefit. To help make New Brunswick an even more family-friendly province, the Discussion Paper presents three further options to be considered.

The first of these would be the introduction of a new, non-refundable child tax credit. This would reduce personal income tax payable by up to $400 per child and would be available to all families, regardless of income level. New Brunswick's new non-refundable child tax credit would be phased in over four years.

The second family-friendly option being proposed for discussion would be a New Brunswick Universal Child Care Benefit of $50 per month ($600 annually) for each child under the age of six. The provincial benefit would be equal to half the current federal amount of $1,200, increasing the total contribution to child care costs to $1,800. This amount would be provided on the same basis as the existing federal benefit, and would be provided to all families, regardless of their income level.

Finally, New Brunswick supports the introduction of a Tax-Free Savings Account (TFSA) and will ensure that income earned in a TFSA will not impact provincial income-tested tax benefits.

Creating a growth-oriented business tax environment

New Brunswick's current general corporate income tax rate does not provide the incentive for economic growth that is required to achieve self-sufficiency. The province's 13% rate, when combined with the federal corporate income tax of 19.5%, gives a total corporate income tax in New Brunswick of 32.5%.

The federal government has pledged to reduce its corporate tax rate to 15% over the coming four years. It has challenged the provinces to drop their general corporate rate to 10%.

However, to drive business growth and position New Brunswick to achieve self-sufficiency, the province must reduce corporate income taxes beyond the federal government's suggested rate so that New Brunswick is competitive on a national and global scale. The Discussion Paper presents three options: reducing the general corporate income tax rate from the current 13 per cent to 10 per cent, seven per cent or five per cent.

Promoting a cleaner and greener environment

British Columbia introduced a provincial carbon tax on July 1, 2008, starting at a rate of $10 per tonne of associated carbon or carbon-equivalent emissions. This tax will be phased in over four years, with the rate reaching $30 a tonne by 2012. The 2008 carbon tax rate works out to 2.34 cents per litre for gasoline and 2.69 cents per litre for home heating oil.

To offset the impact of the new carbon tax, low-income British Columbians will receive an annual Carbon Action Credit of $100 per adult and $30 per child. This credit will be paid quarterly to low-income earners along with the federal Goods and Services Tax Credit. To further encourage British Columbians to make lifestyle changes, each British Columbia resident will receive a one-time payment of $100 as a "Climate Action Dividend".

British Columbia also announced reductions in personal and corporate income taxes in its 2008 Budget, which will reduce the impact of the new carbon tax on personal spending choices and keep the province competitive for jobs and investment.

New Brunswick could consider implementing a carbon tax based on the British Columbia model – a tax on all forms of carbon or carbon-equivalent emissions, phased in gradually over several years, with a reimbursement credit to offset the impact of this tax on low-income New Brunswickers.

Like the British Columbia credit, a New Brunswick Climate Change Tax Credit would be paid to those receiving the existing federal GST credit and be included with the quarterly federal credit payment. This credit could replace the existing Home Energy Assistance Program (HEAP). By replacing an application-based program with an automatic credit, the province would ensure that all low-income New Brunswickers receive financial assistance with respect to fuel costs.

Rebalancing the tax system: harmonized sales tax

The Discussion Paper proposes significant reductions in taxes on income and modest increases in taxes on consumption. A two percentage point increase in the provincial portion of the HST would return the combined tax to the 15% level that was in effect two years ago. For such an increase to be put into effect, changes in the existing harmonized sales tax agreement would have to be negotiated with the federal government.

An increase in the HST would modestly increase the cost of taxable goods and services to consumers. For example, a two percentage point increase would represent an increase of 3¢ on a $1.50 cup of coffee, an additional $10 on a $500 television, and $400 on the purchase of a $20,000 automobile.

This modest increase in the provincial portion of the HST could provide revenue to support the proposed reduction of personal and corporate income taxes. More importantly, it would move the focus of the New Brunswick tax system toward the savings, investment, income generation, economic growth and job creation required to achieve self-sufficiency.

Hot News Items

Manitoba's Employment Standards Protection for Agricultural Workers Now Law

Effective June 30, 2008, the *Employment Standards Code* provides increased protection for agricultural workers. There are four broad categories of workers in agriculture. Different provisions apply to each of these categories. These changes were previously summarized in the February issue of *PaySource*, No. 152.

Employees employed by agriculture companies that provide services to farms and farmers are covered by all provisions of the *Employment Standards Code*. These are employees who work for individuals or companies that do not own the farm where the work is being done. Examples of this type of agricultural company includes businesses that provide services such as custom combining, chicken catching crews, and manure removal.

Similarly, employees who perform all or substantially all of their work in climate-controlled facilities such as greenhouses, mushroom farms, and indoor livestock operations are also covered by all of the provisions of the *Employment Standards Code*. In determining whether an employee performs all or substantially all of their work in a climate-controlled facility, it is important to determine what the individual was hired to do. For example, if an

employee was hired to work in a greenhouse, but performs some outside work (i.e., watering large shrubs, moving fertilizers/feed, shifting maturing stock between facilities), the employee would be covered by all of the employment standards provisions. However, as a second example, if the employee was hired to work on a mixed farm operation, where part of their work would be done in climate-controlled greenhouses, but the remainder of their work would be done outside, the employee would be excluded from the hours of work, overtime, reporting pay, and general holiday provisions

Employees who work on a farm in the primary production of agricultural products on that farm are covered by most of the provisions of the *Employment Standards Code*, but are excluded from hours of work, overtime, reporting pay, and general holiday provisions. Agricultural products include livestock, poultry, livestock and poultry products, fruits, vegetables, grains, oilseeds, pulse, forage and market garden or horticultural products.

Employees employed in fishing or who work on a farm that is owned by a member of their family are excluded from most of the provisions of the *Employment Standards Code* and are in fact only covered by provisions dealing with payment of wages, equal wages and employee records. Family member is defined as a spouse or common-law partner (includes same-sex partner), a parent, a child, or a child of the spouse or common-law partner, a brother, sister, step-brother, step-sister, uncle, aunt, nephew, niece, grandchild or grandparent of the employee or of the employee's spouse or common-law partner; a parent of the employee's spouse or common-law partner; a current or former foster parent of the employee or of the employee's spouse or common-law partner; a current or former foster child, ward or guardian of the employee or of the employee's spouse or common-law partner; the spouse or common-law partner of any of the above, and any other person whom the employee considers to be like a close relative (e.g., a friend or neighbour), whether or not they are related by blood, adoption, marriage, or common-law relationship.

Reservists Leave Now Law – British Columbia and Newfoundland and Labrador

British Columbia and Newfoundland and Labrador have joined the federal government, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Manitoba and Saskatchewan, which have already amended their respective employment standards legislation to protect reservists' jobs.

The British Columbia amendments are contained in Bill 43, *Miscellaneous Statutes Amendment Act (No. 2) 2008*, which received first reading April 30, 2008, second reading May 15, 2008 and third reading and Royal Assent May 29, 2008. Bill 43 was previously summarized in the May issue of *PaySource*, No. 155.

The Newfoundland and Labrador amendments are contained in Bill 1, *An Act to Amend the Labour Standards Act to Provide for Leave for Reservists*, which received Royal Assent June 4, 2008. Bill 1 was previously summarized in the April issue of *PaySource*, No. 154.

The new British Columbia and Newfoundland and Labrador Reservists Leave have been incorporated into the Employment Standards section of PAYSOURCE at ¶5924 and ¶5930.

Need To Know

CRA Announces Third Quarter Interest Rates

The third quarter interest rates effective July 1, 2008 through September 30, 2008, were recently confirmed by the Canada Revenue Agency (CRA).

The third quarter interest rates have been incorporated into PAYSOURCE in the Employee Benefits section at ¶20,155 and ¶20,600, the Statutory Deductions – Employer Remittances section at ¶24,304, the Statutory Deductions – Tax section at ¶27,020, and the Year-End Reporting section at ¶65,686.

British Columbia Farm Worker Protection Now Law

During Farm Safety Week in British Columbia, the government introduced legislation to improve farm worker protection. The amendments are contained in Bill 13, the *Labour and Citizen's Services Statutes Amendment Act, 2008*, which was previously summarized in the April issue of PAYSOURCE, No. 154.

Bill 13 received first reading March 13, 2008, second reading April 1, 2008, third reading April 7, 2008, and Royal Assent May 1, 2008.

Amendments made by the Bill to the *Employment Standards Act* that prohibit farm producers from hiring farm labour contractors who are not licensed, and that provide for the cancellation or suspension of a farm labour contractor's licence for safety violations, came into force on Royal Assent. Other amendments, which require contractors to pay for alternative transportation of affected employees when an unsafe farm labour contractor's vehicle is taken off the road following a roadside check, were proclaimed law by Regulation effective June 6, 2008.

New regulations related to farm labour contractor licences, British Columbia Regulation 404/2008, also came into effect on June 6.

Manitoba Child and Foreign Worker Protection Legislation Progresses

Manitoba has introduced legislation to better protect two vulnerable groups, children and youth in the modelling industry and foreign workers, from unscrupulous recruiters. Bill 22, the *Worker Recruitment and Protection Act*, would, if passed, repeal the *Employment Services Act*, which currently governs the activities of third-party placement agencies in Manitoba.

With respect to children and youth in the modelling and talent industry, the Bill proposes to decrease their vulnerability by:

- regulating the activities of talent and modelling agencies through licensing;
- ensuring that fees are not linked to the child's opportunity to find work; and
- instituting strict requirements for children being promoted by the industry, including child work permits.

With respect to foreign workers, the Bill would offer increased protections by:

- requiring all employers to register with the province before recruitment of foreign workers begins;
- regulating the activities of recruiters through licensing; and
- prohibiting recruiters from charging workers fees, either directly or indirectly, for recruitment.

The Director of Employment Standards would have the authority to refuse or revoke a licence, and to investigate and recover for workers or children money they have paid to be recruited or represented by an employment agency, a child talent agency, an employer, or a recruiter of foreign workers or child performers.

Bill 22, which was previously summarized in the May issue of *PaySource*, No. 155, received third reading and Royal Assent June 12, 2008. The Bill has not yet been proclaimed into law and subscribers will be notified when the amendments become law.

Nunavut Minimum Wage Increase

On September 4, 2008 the Nunavut minimum wage will increase to $10.00 per hour, up from the current level of $8.50 per hour.

The new minimum wage rates are located in the "Employment Standards" section of PAYSOURCE at ¶5505 and ¶5544.

Recent Cases and Rulings

Employee who filed wrongful dismissal action, before employer decided severance amount, repudiated contract

• • • **British Columbia** • • • The Terrace Tourism Society ("TTS") aimed to promote tourism in and around Terrace, British Columbia. Lewis was hired as its Executive Director on May 3, 2004. On December 31, 2006 she began an unpaid maternity leave of one year. Early in January 2007, a meeting of TTS was held where all seven directors resigned, and a committee was struck to determine its future. Pernarowski, a former president of the Terrace and District Chamber of Commerce, was asked by the Chamber of Commerce Board of Directors to assist TTS, and volunteered to sit on the TTS committee. A key issue was the deteriorating relationship between TTS and the City of Terrace. At a meeting on February 19, 2007, the membership voted to wind up the society, and Lewis was in attendance for part of that meeting. As part of the dissolution of the TTS, it was necessary to sever the Executive Director position. Pernarowski had some difficulty determining Lewis's salary for the purposes of severance pay, and there were also issues surrounding the payment of salary during a medical leave, cell phone and mileage payments, and the payment for an accounting software program. On March 19, 2007, just before TTS offered a severance package to Lewis, she brought an action for wrongful dismissal. On April 27, TTS advised Lewis that it was terminating its employment relationship with her.

The action was dismissed. Unless TTS either expressly or constructively dismissed Lewis from her employment, her action against TTS on March 19, 2007 amounted to a repudiation of the contract of employment, which TTS was entitled to accept. It could then formally terminate the contract, which it did on April 27, 2007. When TTS first decided to wind up, it knew that it would have to terminate the employment contract with Lewis, which it could do as long as it gave Lewis notice or severance pay. Since Lewis was on maternity leave, TTS was unable to give notice and was required to offer severance. They were delayed in offering severance while resolving her salary issues, and before TTS had a chance to offer Lewis severance she sued, which meant that she, not TTS, had repudiated the contract.

Lewis v. Terrace Tourism Society, (B.C.S.C.), 2008 CLLC ¶210-018,

Supreme Court of Canada finds employee who refused 24 months' working notice failed to mitigate his damages

• • • **Yukon** • • • Evans worked for over 23 years at the union's branch office in Whitehorse, along with his wife. He was dismissed on January 2, 2003, after the election of a new union executive. An opinion from the union's legal counsel prior to his termination determined that six employees, including Evans, were entitled to working notice, or pay in lieu of notice, but no notice was mentioned to Evans in his termination letter. During subsequent negotiations, Evans asked for 24 months' reasonable notice – 12 months' working notice and 12 months' paid notice, and requested that he be able to retire and have his wife replace him as the union's business agent. The union claimed that Evans was required to work for the full 24-month notice period. Evans brought a wrongful dismissal action, and the trial judge awarded him 22 months' notice. According to the trial judge, the letter to Evans from the union constituted termination, and the further negotiations were to rehire him for a fixed term. In addition, the trial judge found no misconduct by the union justifying an extension of the notice period, and found that Evans did not fail to mitigate his damages. The appeal court determined that Evans failed to mitigate his damages on termination by refusing to work out the remainder of his notice period. Evans was not qualified for other jobs in Whitehorse, and did not even attempt to look for one, so he was required to mitigate his damages by taking the job offered by the union for two paid years, starting when he was terminated (see 2006 CLLC ¶210-045). This decision was appealed.

The appeal was dismissed. The Court of Appeal was correct to apply the same principles to both constructively dismissed and wrongfully dismissed employees. In both situations, the key element is that the employer has ended the employment contract without notice. In some circumstances, it will be necessary for a dismissed employee to mitigate his or her damages by returning to work for the same employer, which is consistent with the notion that damages are meant to compensate for lack of notice, not to penalize an employer for terminating an employee. Notice periods are meant to provide employees with the opportunity to find a new job, and employers who provide sufficient working notice are not required to pay an employee simply for terminating the contract. There is no practical difference between informing an employee that his or her contract will be terminated in 12 months' time and terminating the employee's contract immediately but offering the employee a new employment opportunity for a period of up to 12 months. Unless there are circumstances making the return to work unreasonable, an employee can objectively be expected to mitigate damages in either situation by returning to work for the dismissing employer. In determining whether it is objectively reasonable for an employee to return to work to mitigate damages, one must look at whether a reasonable person would accept such an opportunity. Important factors include: the same salary, similar working conditions, personal relationships that are not acrimonious, the history and nature of the employment, possible litigation, and whether the re-employment offer was made while the employee was still working for the employer or after he or she had left. Most critically, an employee is not obliged to mitigate by working in an atmosphere of hostility, embarrassment or humiliation. Evans' situation did not justify his refusal to resume employment with the union. His requests that the letter of termination be rescinded and that he be re-established as an indefinite term employee were unreasonable, since that would have simply extended the notice period to 29 months. It was also unreasonable to demand that Evans' wife receive a new job, since this had no relationship to the conditions under which Evans would be continuing his employment relationship. The relationship between Evans and the union was not seriously damaged, as he was prepared to return to work during the negotiations, and did not bring up any concerns at that time. Given that the terms of employment offered by the union were the same, it was not objectively unreasonable for Evans to return to work to mitigate his damages.

Evans v. Teamsters Local Union No. 31, (S.C.C.), 2008 CLLC ¶210-019

Employee's refusal to sign new contract did not end employment relationship

• • • **Ontario** • • • Wronko worked for Western Inventory for 17 years, and in February 2000 he was promoted to the position of Vice-President of National Accounts and Marketing. Following this promotion, he signed a written employment contract, dated December 20, 2000, which contained a termination provision providing for two years salary plus bonus to be paid on termination. In June 2002, Wronko was given a new employment contract to sign, which reduced his entitlement to notice of termination from two years to three weeks notice or pay in lieu for each year of employment, to a maximum of 30 weeks. Wronko refused to sign this new contract. On September 9, 2002, Wronko was given a memo from Western giving him 104 weeks, or two years, notice that the termination provision in the employment contract would be changed to entitlement to only three weeks notice or pay in lieu for each year worked up to a maximum of 30 weeks. Two years later, Wronko was sent the new agreement by e-mail and was asked to sign it. The e-mail stated that if he did not want to accept the new terms and conditions of employ-

ment, then Western did not have a job for him. Wronko still did not accept the new contract, so he understood his employment to be terminated. In an action for wrongful dismissal, the trial judge determined that Western had the right to impose a fundamental change to the contract of employment as long as it provided reasonable notice, which it did in this case. As a result, the trial judge found that it was Wronko who had ended the employment relationship. Wronko appealed.

The appeal was allowed. The Court of Appeal disagreed with the trial judge's conclusion that Wronko ended the employment relationship. The employer's intention to terminate Wronko was clearly set out, as he was told that if he did not accept the change to his employment contract then they did not have a job for him. When an employer attempts to unilaterally change a fundamental term of a contract of employment, an employee may accept the change, reject it and sue for damages, or let the employer know that he or she rejects the change, at which point the employer may terminate the employee and offer re-employment on the new terms, or allow the employee to continue to work on the terms of the original contract. In this case, the trial judge erred in treating the case as though the employee had chosen to reject the changes and bring a constructive dismissal claim. The unilateral change did not have an immediate impact on Wronko, so it actually fell within the third option. Wronko refused to accept the new termination provision, but he was allowed to continue to work under the existing terms of his contract. Therefore, the termination that occurred two years later meant that he was entitled to two years termination pay, pursuant to his existing employment contract.

Wronko v. Western Inventory Service Ltd., (Ont. C.A.), 2008 CLLC ¶210-020.

Statutory overtime entitlement was not an implied term of contract

• • • **British Columbia** • • • E Care Contact Centers was a payday loan business that employed Macaraeg. On hiring, Macaraeg signed an "Offer of Employment" setting out her rate of pay, vacation entitlement, and group benefits; but it did not mention overtime. Macaraeg worked long hours, but was told that the company did not pay for overtime. She was terminated without cause 30 months after starting work, and was given two weeks' pay in lieu of notice. Macaraeg brought a wrongful dismissal action, and claimed overtime pay. The trial judge determined that payment for overtime in accordance with the mandatory provisions of the *Employment Standards Act* was an implied term of her employment contract, and that the legislation did not preclude an employee from pursuing a civil action to recover minimum employment benefits that employers were statutorily required to provide in employment contracts, such as overtime payments (see 2007 CLLC ¶210-001). E Care appealed.

The appeal was allowed. The general rule is that there is no cause of action at common law to enforce statutorily-conferred rights, except when the court concludes that the legislators intended the statutorily-conferred right to be enforced by civil action. In determining the intent of the legislators, an important indication is whether the legislation provides effective enforcement of the right conferred by statute, in which case there would be no need for enforcement by a civil cause of action outside the statute. If the statutory remedy was inadequate, a court could infer that the legislature intended the right to be enforceable by civil action. The trial judge in this case erred by concluding as a general proposition that rights in employment standards legislation were implied by law into employment agreements. The *Employment Standards Act* provided a comprehensive administrative scheme for the granting and enforcement of employee rights, and there was no intention that such rights could be enforced in a civil action. Accordingly, the employee was not entitled to a civil action to enforce her statutory right to overtime pay, and the minimum overtime pay requirements of the *Employment Standards Act* were not implied terms of the contract of employment.

Macaraeg v. E Care Contact Centers Ltd., (B.C.C.A.), 2008 CLLC ¶210-021.

Rebate on Purchase of Employer's Product

As noted in Interpretation Bulletin IT-470R a taxable benefit does not normally arise where an employee purchases merchandise from an employer at a discount. In a situation the CRA was asked to comment on, employees would receive a rebate with respect to the employer's product, which would be acquired through a retailer. It was the CRA's view that the program was similar to the discount referred to in the IT Bulletin and that paragraph 6(1)(a) should not apply to include the cash rebate in an employee's income.

Business and Partnerships Division, April 4, 2008, Document No. 2007-0260051E5.

Automobile Taxable Benefit – ecoAUTO Rebate to Calculate Standby Charge

The situation the CRA was asked to consider involved an employer having purchased or leased an automobile eligible for an ecoAUTO rebate and then made it available to an employee. The rebate ranging from $1,000 to $2,000 is offered under the federal ecoAUTO Rebate Program to encourage Canadians to buy or lease fuel-efficient vehicles on or after March 20, 2007. The CRA was asked if the ecoAUTO rebate should be taken into account in the calculation of the reasonable automobile standby charge under subsection 6(2) of the Act. Relying on the analysis of element C (i.e., the cost of the automobile purchased by the employer) and element E (i.e., lease payments made by the employer to the lessor for the leased automobile) of the formula in subsection 6(2) of the Act, the CRA confirmed that the rebate only needed to be taken into consideration when the automobile was purchased by the employer. In this case, the ecoAUTO rebate would be deducted from the purchase price of the vehicle to determine its actual cost. In the case of a leased automobile, the CRA considered that the rebate was totally independent from the lease contract and had not to be taken into account to calculate the lease payments and determine the amount of the reasonable standby charge. In other words, the CRA considered that the rebate was an issue between the lessor and Transport Canada and that the lease payments made by the employer to the lessor would exclude the rebate. The CRA acknowledged the disparity of the standby charge calculation depending on whether the automobile was owned or leased by the employer but noted that the associated taxable benefit would be negligible considering that the maximum ecoAUTO rebate was only $2,000.

Technical Interpretation, Business and Partnerships Division, April 10, 2008, Document No. 2008-0265761E5.

Automobile Allowance – Travel Between Home and Place of Work

The issue considered by the CRA involved a school commissioner being reimbursed by his employer for travel expenses incurred between his residence and the school board administrative centre to attend meetings. The CRA was asked if those reimbursements, which were in the form of a per kilometre allowance, could be excluded from the commissioner's income for the year during which they were received. The CRA confirmed that the reimbursements would have to be included in the commissioner's income under subsection 6(1) of the Act because the travel expenses were not incurred in the course of performing his duties or traveling between two places of work. Instead, they were incurred to enable the commissioner to attend meetings at the school board administrative centre and thus perform his duties. His role as school commissioner constituted an office within the meaning of this term in subsection 248(1) of the Act and subjected him to all rules applicable to the income from an office or employment. Relying on paragraph 14 of IT-522R and the Federal Court of Appeal's decision in Wayne Daniels v. The Queen (2004 DTC 6276), the CRA considered that the travel between the commissioner's residence and the administrative centre was of a personal nature and that any expenses incurred in respect of such travel was not deductible. The Court made a very clear distinction between travel expenses incurred in the course of performing a taxpayer's duties and such expenses incurred to enable the taxpayer to perform those duties. The CRA also confirmed that the commissioner would not be allowed to deduct any expenses associated with such travel.

Technical Interpretation, Business and Partnerships Division, April 15, 2008, Document No. 2006-0216791E5.

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