

Docket: 2003-1188(IT)G

BETWEEN:

DESMOND A. ADLER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1231(IT)G

BETWEEN:

DOUGLAS ALLOWAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1232(IT)G

BETWEEN:

CAROL AMELIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2002-4231(IT)G

BETWEEN:

DONALD BARNES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1239(IT)G

BETWEEN:

MARY-PATRICIA BARRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1240(IT)G

BETWEEN:

RANDY BAYRACK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1187(IT)G

BETWEEN:

JOANNE BEATON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1242(IT)G

BETWEEN:

MYRON S. BORYS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.



Docket: 2003-1230(IT)G

BETWEEN:

BRUCE R. BRANDELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is allowed and the assessment is referred back to the Minister for reconsideration and reassessment on the basis that:

1. The sum of \$1,926.00 included in income be deleted;

2. The Appellant is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1197(IT)G

BETWEEN:

HENRY C. BRUNS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1198(IT)G

BETWEEN:

GARY CERANTOLA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2002-4221(IT)G

BETWEEN:

DAN DELALOYE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is allowed and the assessment is referred back to the Minister for reconsideration and reassessment on the basis that:

1. The sum of \$1,926.00 included in income be deleted;

2. The Appellant is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2002-4220(IT)G

BETWEEN:

RANDALL L. EDGAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1196(IT)G

BETWEEN:

JOHN R. HARRINGTON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.



Docket: 2003-1195(IT)G

BETWEEN:

HENRY P. LAZARENKO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard during the course of 5 days between January 8 and  
January 12, 2007 at Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Docket: 2003-1191(IT)G

BETWEEN:

ROY A. VITEYCHUK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard during the course of 5 days between January 8 and January 12, 2007 at  
Edmonton, Alberta

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:

Curtis R. Stewart  
Jasmine Sidhu and  
Michael J. Gemmiti

Counsel for the Respondent:

Rhonda L. Nahorniak  
Kerry E.S. Boyd

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1998 taxation year is dismissed and the Respondent is entitled to costs in accordance with the terms of the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

Citation: 2007TCC272

Date: 20070517

Dockets: 2003-1188(IT)G, 2003-1231(IT)G,  
2003-1232(IT)G, 2002-4231(IT)G, 2003-1239(IT)G,  
2003-1240(IT)G, 2003-1187(IT)G, 2003-1242(IT)G,  
2003-1230(IT)G, 2003-1197(IT)G,  
2003-1198(IT)G, 2002-4221(IT)G, 2002-4220(IT)G,  
2003-1196(IT)G, 2003-1195(IT)G,  
2003-1191(IT)G,

BETWEEN:

DESMOND A. ADLER, DOUGLAS ALLOWAY,  
CAROL AMELIO, DONALD BARNES, MARY-PATRICIA BARRY,  
RANDY BAYRACK, JOANNE BEATON, MYRON S. BORYS,  
BRUCE R. BRANDELL, HENRY C. BRUNS,  
GARY CERANTOLA, DAN DELALOYE, RANDALL L. EDGAR,  
JOHN R. HARRINGTON, HENRY P. LAZARENKO  
ROY A. VITEYCHUK,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Rowe, D.J.

[1] Each appellant appealed from an assessment of income tax for the 1998 taxation year. Each appellant had been provided with a free parking pass by their employer – Telus Communications Inc. (Telus) either directly or through a wholly-owned subsidiary or division of Telus within a large organization generally known as Telus Group. The Minister of National Revenue (the "Minister") assessed each appellant on the basis the fair market value of the parking pass constituted a

taxable benefit and added the applicable amount thereof into the taxable income of each appellant. Although the amount included into income of each appellant representing the fair market value of the parking pass provided by Telus varies, the common issue is whether the pass is a taxable benefit pursuant to the relevant provisions of the *Income Tax Act*. (the "Act") The position of the Minister is that the provision of those parking passes falls within the meaning of subsection 6(1)(a) of the *Act*.

[2] The appellants were represented by Mr. Curtis Stewart, Ms. Jasmine Sidhu and Mr. Michael Gemmiti. Counsel for the respondent were Ms. Rhonda Nahorniak and Mr. Kerry Boyd. Counsel for the respondents and counsel for the appellants agreed these appeals would proceed on the basis of common evidence to be applied - as required - to each appeal. Four of the parking facilities provided by Telus to employees – in 1998 - were located in Edmonton and one was in Calgary. Three of the appellants worked in Calgary and 13 were employed in Edmonton.

[3] Counsel for both parties agreed that a binder entitled Admissions of Facts and Documents be filed as Exhibit A-1. As the index indicates, the admissions at tabs 1-7, inclusive, relate to admissions of facts and documents – referred to as Global Admissions – that relate to all 16 appellants. Thereafter, the admissions of facts and documents are specific to an individual appellant. In addition to the admissions contained in the Global Admissions, during the direct testimony of the appellant Mary-Patricia Barry, Curtis Stewart, counsel for the appellants, advised the Court that the answer provided below by Telus to each appellant for purposes of satisfying the question posed by the respondent in the process of written interrogatories was binding on all appellants. In responding to questions posed within the fourth set of interrogatories, each appellant had undertaken to ask Telus to advise which factors it had identified - in giving previous answers - upon which it had relied to issue a free parking pass. The response was as follows:

Telus has described in various answers the criteria it normally used in issuing parking passes to employees. Given the passage of time, it may be impossible to determine the specific factors Telus used in issuing a parking pass to each of the 50 appellants. Ultimately, it is likely that Telus would be forced to rely on the rationale provided by the particular Appellant who is in a much better position to know the particular reasons. Telus understands that in the previous answers provided by each particular Appellant, the Appellants have provided the factors he or she believed justified the issuance of a parking pass by Telus.

[4] Counsel for the appellants agreed there was no issue with respect to the fair market value of the parking passes issued by Telus to the appellants in 1998 as

adopted by the Minister for the purpose of reassessing each appellant by including that amount into income. The thrust of the appellants' contention is that the Minister was incorrect in assuming the parking pass primarily benefited an appellant rather than Telus or that the parking pass was a personal benefit conferred on an appellant because it facilitated travel to and from the workplace.

[5] All but one of the 16 appellants testified. In the course of testimony, most appellants dealt with many facts that were the subject of an admission – either Global – or those within Exhibit A-1 - applicable to a particular appeal. In the event some matters were not covered in the course of examination of an appellant on the witness stand and were relevant to issues before me, I have included those admitted facts after each segment of these reasons dealing with the evidence of a specific appellant.

[6] Richard George Schroter was examined by Mr. Stewart. Schroter testified he is a Chartered Accountant and is employed by Telus as a Director of Taxation. He began working for Telus in 1991 in the internal audit department and after 2 years was assigned to the tax group where he carried out various functions with increasing responsibility. In 1998, he was appointed Director of the Income Tax Section and supervises 20 employees. Schroter stated that in 1998, Telus was the sole provider of telecommunication services in Alberta. However, the Canadian Radio-television and Telecommunications Commission (CRTC) – in 1997 - provided a framework for competition within the telecommunication industry in Canada. Up to that point, British Columbia Telephone Company (BC Tel) operated in British Columbia, Telus in Alberta and Bell Canada Enterprises (Bell) in Ontario and Québec, basically without competition. The change in structure opened up the marketplace in Canada and required a major shift in business direction including the need to pursue certain acquisitions so Telus could operate in Ontario. In 1999, Telus merged with BC Tel. With respect to the issue of parking benefits provided to Telus employees, Schroter stated he was involved – in 1997 - with Canada Customs and Revenue Agency (CCRA), the predecessor of Canada Revenue Agency (CRA) pertaining to the 1994 taxation year. In that instance, Telus took the position that the primary benefit of the parking pass accrued to Telus rather than the employee. Two of the workers who were reassessed by the Minister to include the value of the parking pass into income as a taxable benefit appealed to the Tax Court of Canada and won their appeals. Schroter stated the issue of parking passes did not come up again until early March 2002, when the Minister reassessed certain Telus employees for the 1998 taxation year by including the value of the parking passes into their income. Schroter ascertained in the course of discussions with CRA officials that the agency did not consider itself bound by the two Tax Court decisions with respect to the same issue - in the 1994 taxation year - since those cases had proceeded by way of informal procedure and did not have

precedential value. Schroter stated he knew Telus wanted senior employees to have vehicles readily available, especially for those who worked irregular shifts throughout the entire year. Telus did not want employees spending time travelling to the office from another work location nor did it consider the use of public transit to be adequate. As a Director of Taxation, Schroter relied on the earlier decisions of the Tax Court and retained counsel to appeal - pursuant to the General Procedure Rules - those assessments issued by the Minister on the basis the provision of free parking did not constitute a taxable benefit. Schroter stated he did not know the reasons for issuing parking passes to certain employees. Counsel referred Schroter to the binder - Exhibit A-1 - and to paragraph 11 of the Global Admissions which stated that - in 1998 - "for employees in pay bands 5 and 4, it was an implied condition that overtime would be expected where required to keep up to the workload and to ensure completion of projects on a timely basis, and such overtime was generally built into the employee's overall compensation." Schroter stated there were 7 pay bands in 1998. The first 3 pertained to entry-level employees working in clerical and support positions. Mid-level managers, some senior staff and some professionals such as engineers, lawyers, accountants were included in pay bands 4 and 5. The General Manager and various vice-presidents and other business leaders were remunerated pursuant to pay bands 6 and 7. Schroter stated there was a lot of work that had to be performed in 1998 because of the number and breadth of projects in Canada designed to expand the business operation of Telus. The investigations required before merging with BC Tel or prior to acquiring other companies generated a substantial volume of work for managers and senior employees, all of whom were expected to work as long as necessary to complete their tasks. In order to carry out these onerous duties, Telus wanted its managers to have the ability to travel, as required. The Telus policy with respect to reimbursing employees for taxi fares is stated in paragraphs 3, 4 and 5 of the Global Admissions. Summarizing the admissions in paragraphs 6, 7 and 8, Schroter stated Telus did not carry out any analysis to determine whether it was an economic advantage to Telus to provide parking to its employees rather than reimbursing them for taxi fares nor whether it was cost-effective to provide parking to its employees as opposed to paying for taxis nor was any analysis undertaken to compare the cost of requiring employees to use their own vehicles in the course of their duties rather than reimbursing them for taxi fare.

[7] Schroter was cross-examined by Rhonda Nahorniak. He acknowledged that he was Manager of Taxation in 1998. Since then, the duties of that position have evolved and the title is now Director. In the course of dealing with CRA officials with respect to the parking pass issue, he was assisted by two other members of his group, Ken Bagnall and Trevor Edmundson. CRA submitted queries which were completed in writing and returned and meetings were held on a regular basis with the CRA audit

team. Schroter identified a document – Exhibit R-1 – dated November 2, 1999 - as the Telus response to CRA inquiries. He wrote a letter – Exhibit R-2 – dated January 25, 2002 - to Don Cloutier, Verification and Enforcement Division of CCRA. Schroter agreed the position stated in paragraph 3 of said letter is the same today, namely, that Telus provides parking for certain employees because it is primarily to its advantage to do so considering the nature of the duties carried out by the recipients of these passes and their rank within the organization which requires them to work irregular hours, extra hours, and to work on weekends and holidays. Counsel referred Schroter to a Telus document entitled Compensation Policies and Guidelines – Variable Pay – Exhibit A-1, tab 4 – effective January 1996. Schroter stated he thought that policy was in effect during 1998 and also applied to Telus wholly-owned subsidiaries. He acknowledged the wording of the portion of said document – p. 12/74 – which stated perquisites “are kept to a minimum and are provided in order to be market competitive or to enhance an individual’s ability to perform their role.”

[8] Daniel (Dan) Henry Delaloye - examined by Curtis Stewart - testified he is Chief Executive Officer of Celera Solutions Inc. He started working for Alberta Government Telephones (AGT) - the predecessor of Telus - in 1993. In 1998, at Telus, he was Vice President, Card, Operator, Pay Phone Services, a position in pay band 6. He was responsible for 3 offices in Edmonton, 3 in Calgary and one each in Grande Prairie and Lethbridge. In 1997, he moved to Calgary in order to supervise a new division of Telus and was issued a parking pass for the lot in Telus Tower at 411 – 1<sup>st</sup> St. SE in downtown Calgary. Delaloye stated he worked long hours in 1998 and travelled by car to pay phone offices at locations within Calgary. Part of his duties was to attend various community functions including United Way which held meetings at 7 a.m. and to participate in activities undertaken by Theatre Calgary and other organizations with the view to increasing the visibility of Telus. Delaloye estimated one-third of his time was spent away from the office in 1998. Executive meetings were held in Edmonton and, if he needed a vehicle there, drove from Calgary. Since joining Telus in 1993, he had always been assigned a free parking pass and considered it “absolutely essential” in order to provide him with the opportunity to commute during the day and visit clients such as CP Hotels that owned or operated facilities in various locations, including Banff or to attend at the Calgary Airport Authority offices or at Telus pay phone offices in Calgary. In his opinion, it was extremely difficult to use other means of transportation to carry out his responsibilities to Telus. He did not consider the parking pass was a significant item in terms of compensation since a new card was issued about every 36 months without having to apply for a renewal.

[9] Delaloye was cross-examined by Kerry Boyd. He conceded that driving his own car allowed him to commute to and from work at convenient times. His assigned parking space was a reserved stall, underground, in a heated parkade. While attending at other Telus offices or when attending functions at night on behalf of Telus, he used public parking and was reimbursed by Telus for the cost. He acknowledged he was permitted to park in the space for personal use – such as shopping – but cannot recall having done so as it was not conveniently located to the stores. He agreed he could have taken the LRT public transit from his residential area in Lake Bonavista and that there was a station within 4 blocks of the Telus Tower. Delaloye stated he did not have any documentation with respect to the reason Telus provided him with a vehicle – 1997 Honda Acura - but assumed it was inherent in the position he occupied. He paid income tax on the personal use portion of the vehicle on the basis it constituted a personal benefit. He knew about the Telus policy of reimbursing employees who used their own vehicles in the course of their employment. He was aware of a memorandum establishing his position but did not have a written employment contract nor was there an official job description pertaining to his role in 1998. Delaloye stated his out-of-town travel to Toronto, Vancouver and various cities in Alberta occupied about 70 days. According to the log – Exhibit A-1, Delaloye label, tab 2 – he used the vehicle 137 days and the business portion of total distance driven was 70%. Telus had its own air service but the aircraft were often full and he had to travel by commercial airlines. The pay phone office in West Calgary was located in a residential area and Delaloye was able to park without paying. He agreed that parking lots in the vicinity of Telus Tower in downtown Calgary all charged for parking space. Delaloye stated he worked from home a few days in 1998 and could control his hours in the sense he did not “punch a clock.” He held an executive position and worked long hours. In his opinion, without the convenience of a parking pass, he would not have been able to fulfill his responsibilities by using public transit or taxis because some days he made 4 or 5 trips away from his office to locations in Calgary. Delaloye stated that without a reserved parking space he probably would not have worked on Saturday. He agreed he had provided an answer to a written interrogatory that he did not contribute additional hours of work – in 1998 – as a result of Telus providing the parking pass. He stated he believed the parking pass allowed him to be more effective and productive. He acknowledged it would be difficult to calculate the amount of any saving to Telus but considered it reasonable to assume that each time one called for a taxi the waiting time would be at least 15 minutes. In his view, that wasted time could amount to thousands of dollars per year in otherwise billable executive hours, even though Telus had not carried out any analysis to support this theory. Delaloye participated in the variable pay program and received a bonus in excess of \$47,000 according to the Direct Deposit Statement – Exhibit R-3 – which indicated his hourly pay rate was \$68.97.



[10] In re-examination, Delaloye stated he was responsible for various business decisions and considered it essential that he have a vehicle at his disposal together with an assigned parking space within Telus Tower.

[11] (The following facts were admitted by Delaloye in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

5. I did not keep or submit to Telus any records of any overtime I worked in 1998.
9. I had access to the parking lot with the parking pass 24 hours per day, 7 days per week in 1998.
11. In 1998 there was never a time where there were no parking stalls available to me within the parking lot.
13. In 1998 I made use of the parking pass approximately 3 days per week as I traveled throughout Alberta and Canada the remainder of the week.
14. In 1998 I used the parking pass to attend community functions located near Telus Tower approximately 20 to 40 times.

[12] Myron S. Borys – examined by Curtis Stewart - testified he is employed as Vice President of Edmonton Economic Development Corporation. In 1998, he worked for Telus as Director of Consumer Internet Services, a strategic business unit comprised of several groups reporting directly to him. He functioned as general manager to those groups including the help desk service which had more than 200 employees. Other groups within the business unit had up to 40 employees. The help desk operated 7 days a week, 24 hours a day and was structured in two tiers with the second level being staffed by more technologically-advanced personnel capable of dealing with problems unresolved by the initial responder. Borys stated the internet services division was the fastest-growing unit within Telus and the milestone of 100,000 customers was attained. In order to compete with other service providers, Telus introduced high-speed internet connection. Borys stated he was at work before 8 a.m. and worked until 5:30 or 6:00 p.m. and considered those hours to be normal in view of his managerial position - in pay band 5 - which required extra hours of work to carry out his duties. He understood his pay rank had been structured to take into account that he would need to work additional hours which would – otherwise – have been considered as overtime. He used his own vehicle for Telus business purposes “a couple of days a week.” In his opinion, it was not convenient to take a bus to off-site meetings and the frequency of bus service after 6 p.m. was reduced, leading to longer wait times. In 1998, his household had just one vehicle so he took the bus to work often but when he had to arrive early or leave late he used the family car. Telus policy allowed employees to take taxis for business and to claim reimbursement. Borys stated he had a parking pass but did not have an assigned stall. Instead, the parking

privilege was on a “first come, first served” basis but he was always able to find a space. In his opinion, the ability to park his vehicle enhanced his ability to carry out his work. On occasion, he needed to work at the office during a weekend to access the computers, printers and related equipment in order to prepare presentations. He estimated that he used the Telus parking lot once or twice a year for personal reasons.

[13] Borys was cross-examined by Rhonda Nahorniak. He stated his understanding that objectives were established by his supervisor and that a bonus was based on meeting or exceeding those goals. He considered the provision of free parking to be part of his overall compensation since receiving a pass - in 1994 – when employed as a Manager with Edmonton Telephones (Ed Tel), a company subsequently acquired by Telus. He acknowledged Telus did not require him to own or operate a vehicle in the course of his employment nor did his position demand that he hold a valid driver’s licence. Borys estimated he used his vehicle 2 days per week - approximately 100 times per year - and although he knew Telus paid employees for using their personal vehicle for business, could not recall having submitted any expense claims for that purpose in 1998. He agreed Telus was not concerned whether he brought his vehicle to work. As for bus service on Route 66, he acknowledged there was one bus stop approximately 500 metres from his residence and another approximately 7 blocks away and that the service was every 15 minutes in the morning, starting at about 6:30. Borys agreed the parking pass was convenient and reduced travel time to and from work. In 1998, he was not aware of any free parking available on a daily basis in downtown Edmonton. He stated he may have found alternative modes of transportation if he had been required to pay for his parking space. In his opinion, the parking space was most useful when he worked two weekends a month - sometimes as late at 7 p.m. – because bus service was less frequent during those periods. Borys identified the print-out of his 1998 expense claim - behind his label in Exhibit A-1 – and entries showing reimbursement for taxi fares totalling \$1,400.00. He stated Telus policy was to pay for taxis for business purposes even if an employee had brought a vehicle to work. Borys stated sometimes for business travel, he took a taxi to work and then to and from the airport. He was not aware of any reasons for Telus having issued him the parking pass.

[14] (The following facts were admitted by Borys in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

3. In 1998 I resided at 8703 - 42 Avenue, Edmonton, Alberta.
5. In 1998 my scheduled hours of work were 7.5 hour work days from 8:00 a.m. to 4:30 p.m..

6. Despite my scheduled hours of work, in 1998 I worked 1 to 3 hours of overtime per day virtually every day and 4 to 6 hours of overtime in the office on the weekend approximately once per month and at home 1 to 2 times per month.
7. I did not keep or submit to Telus any records of any overtime I worked in 1998.
9. I did not have to apply for my parking pass.
10. The parking pass was available to me for the entire year of 1998.
11. In 1998 my parking pass was for the parking lot located in Telus Plaza at 10020-100 Street in Edmonton, Alberta.
12. I had access to the parking lot with the parking pass 24 hours per day, 7 days per week in 1998.
20. Prior to receipt of the parking pass, I traveled to work by bicycle, public transportation, or car.
21. Prior to receipt of the parking pass, when I traveled to work by car I parked in a daily surface parking lot and paid from \$5.00 to \$7.00 per day.
22. I did not complete a form T2200 for the 1998 taxation year.
27. In 1998, when traveling from work to home, bus route 66 departed downtown for home approximately every 15 minutes from 4:18 p.m. to 5:33 p.m..

[15] Douglas Alloway – examined by Curtis Stewart - testified he is employed by Telus as a Director of Human Resources for Telus and held that position in 1998 where he was responsible for 3 business units and provided support in relation to 1,600 employees. His scheduled work day was from 8:00 a.m. to 4:30 p.m. but – usually - he arrived at work around 7:00 a.m. and left about 5:30 in the afternoon. In 1998, his position did not require him to have a vehicle to carry out his duties nor was it a condition of employment. He did not submit expense accounts to Telus – in 1998 – in respect of use of his vehicle. Alloway stated he had to attend a work site in the Greater Edmonton area about two or three times a week in order to deal with a human resource problem and that it was much easier to use his vehicle which was parked in Telus Plaza. Although Telus had a pool of vehicles for use by certain employees, Human Resources personnel were not included in that category. In Alloway’s opinion, the parking pass permitted him to start work earlier and stated he used the pass only two or three times for personal reasons in 1998. Prior to 1994, he rode the bus to work and considered he may have done so in later years if he had not been provided with the parking pass.

[16] Alloway was cross-examined by Rhonda Nahorniak. He conceded he had not kept any record of hours worked in 1998 and that he worked overtime in order to achieve a promotion and receive better raises. As a Director in pay band 4 , he felt he should work extra hours to justify the privilege of having received – without asking - the parking pass in 1996. In 1998, he used his own car to drive to Edmonton International Airport as there was no direct public transit from his residence. Although he used his vehicle about 1000 kilometres for Telus business purposes in 1998, he did

not submit an expense claim. In his opinion, it was reasonable to assume that if he needed to take 8 to 10 taxi trips per month, that total cost would have exceeded the value of his parking space.

[17] (The following facts were admitted by Alloway in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

12. I had access to the parking lot with the parking pass 24 hours per day, 7 days per week.
13. In 1998 there was never a time where there were no parking stalls available to me within the parking lot.
24. In 1998, the nearest bus stop was two blocks from my residence.

[18] Gary Cerantola was examined by Jasmine Sidhu. Cerantola stated he is currently self-employed but was employed by Telus – in 1998 – as a Director, Operations, International Carrier Services. He had worked for AGT since 1992 and when that entity – formerly owned by the Province of Alberta – became part of Telus Group, it led to what he called a “confusing period” in that it was a new era in telecommunications as a result of the CRTC decision to permit competition within previously restricted areas. His position as Director was in pay band 5. He worked in the Calgary office and was provided with a parking pass - in Telus Tower - which he understood was for the purpose of accommodating his travel for Telus business purposes. He used his own vehicle to travel to business meetings in Edmonton and more often to Red Deer - located midway between Edmonton and Calgary - as that venue was convenient for Telus employees working in those cities. He estimated he used his vehicle for business between 2 and 10 times per week, with 60% of that usage having been planned with the remainder as required during the workday. Telus reimbursed him – on a per kilometre basis - for using his vehicle. He stated the normal Telus working hours were from 8:30 a.m. to 4:30 p.m. but the parking pass permitted him to arrive early and stay late which - in his opinion - enabled him to meet certain objectives. He estimated he worked 4 weekends a month in 1998, a very busy year during which he worked between 65 and 75 hours each week. He recalled using his parking pass once when attending a family function. In 1999, he received a variable pay bonus which was based on criteria pertaining to work performed in 1998. Cerantola stated he had anticipated that as a Director, Operations, it would be necessary to work overtime in order to discharge his responsibilities.

[19] Cerantola was cross-examined by Kerry Boyd. Cerantola agreed it was more convenient to use his personal vehicle even though there were two bus routes near his residence that connected with an LRT station. Prior to moving to Calgary in 1995, he

used public transit to travel to work. He stated he did not have any documentation to demonstrate whether he was required to use his vehicle for business purposes. He drove to Red Deer 8 times in 1998 and also to smaller centres in southern Alberta. He travelled – by air – to Toronto and Montreal and estimated he was away from Calgary – on business - about 60 days a year. When travelling by air, sometimes he took a taxi from home to the airport but on other occasions left his vehicle at Telus Tower and went to the office from the airport. He stated he made decisions about transportation based on the situation and hired taxis and rented various vehicles - including a van - when it was necessary to transport several people to a meeting. Telus reimbursed him for parking charges incurred at an airport lot or other facility during the course of business. Cerantola remained steadfast in his belief that the parking pass was required for him to carry out his duties at peak efficiency.

[20] (The following facts were admitted by Cerantola in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

6. I did not keep or submit to Telus any records of any overtime I worked in 1998.
7. I received my parking pass in 1992 when I started with AGT Ltd. in the position of Director and was in pay band 5 at that time.
12. I did not have an assigned stall within the parking lot but could park in any unreserved parking stall that was available in 1998.
13. In 1998 there was never a time where there were no parking stalls available to me within the parking lot.
15. In 1998 I made use of the parking pass on average 5 days per week.
16. I did not complete a form T2200 for the 1998 taxation year.
19. If I did not receive the parking pass in 1998 I may have chosen not to drive to work but would have traveled to work by whatever means were available.
20. In 1998 it was not a condition of my employment with Telus that I had to have a vehicle to perform my work duties.

[21] Henry C. Bruns was examined by Jasmine Sidhu. He testified he was employed – in 1998 – by Telus as Director, Business Management until April when he assumed the role of Director, Partner Relations. He resided in Calgary and was provided with a free parking pass for the lot in Telus Tower. In 1998, both positions were in pay band 5, the same as Director, Marketing Operations, a function he had assumed – in 1995 – upon promotion and for which he received a free parking pass. His job in 1998 concerned client relations and involved the help desk service. He stated he used his vehicle to drive to meetings or to and from the airport. Although the normal work week was 37.5 hours, Bruns stated he worked extra hours during evenings and on weekends but had not kept any record. In his opinion, the additional hours were necessary to achieve objectives and he regarded the parking pass as a tool that enabled him to work longer hours by eliminating the need to use other means of transportation

or to find alternative parking. He rarely used the parking space for personal reasons. He estimated he could have walked to work in about 30 minutes. Non-employees of Telus were permitted to park in the Tower lot provided there was space available and they paid the cashier at the gate upon exiting the facility.

[22] Bruns was cross-examined by Kerry Boyd. Bruns conceded Telus had not compelled him to use his vehicle and that he had done so based on his own choice even though public transit was available near to his residence and he could have ridden to work – in about 10 minutes – on his bicycle. In his opinion, he did not need a vehicle to maintain his employment but had no documentation to that effect. Although he had no assigned parking stall in 1998, he was always able to find a space. In his view, he was more productive as a result of having the right to park in the facility. Although the majority of the meetings were held on-site – in 1998 – he attended at other locations. He was entitled to reimbursement for use of his vehicle but did not bother to submit an expense claim to his employer for short trips because it took too much time to complete the paperwork. He hired a taxi to travel to and from airports but when not travelling by air preferred to use his own vehicle. Bruns was unable to provide details of the amount of vehicle use for business purposes either in 1998 or in 1997. The majority of his duties were performed in Calgary but he travelled to Edmonton and to Burnaby, B.C. about 1 or 1.5 days per week - on average - between January and April, 1998. After assuming his new position in April, he went to Edmonton once a week and often drove his own car if he considered it more effective. Bruns stated he was not aware of other parking lots near his workplace.

[23] (The following facts were admitted by Bruns in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

3. I commenced employment in 1988 with AGT Ltd. which later became Telus.
17. I did not complete a form T2200 for the 1998 taxation year.
20. Prior to receipt of the parking pass I occasionally used my vehicle to perform job duties but Telus did not reimburse me for the amount I paid for parking.
21. If I did not receive the parking pass in 1998 I may have chosen not to drive to work but would have walked or rode my bike instead.
22. In 1998, I did not contribute overtime to Telus as a result of Telus providing me the parking pass.

[24] John R. Harrington was examined by Curtis Stewart. Harrington testified he was employed by Telus – in 1998 – as a Director, Alliance Management, a position in pay band 5. He met with employees of BC Tel, Bell Canada, and Stentor Telephones in the course of dealing with new technology and in the course of inquiring into the

feasibility of certain acquisitions of other telecommunication entities. He described the working conditions that year as “intense.” He was provided with a free parking pass to the facility at Telus Plaza in Edmonton and used it each day. Although he did not have an assigned stall, he always found a parking space. He estimated he worked between 45 and 50 hours each week in 1998 in order to perform his duties and believed that without the parking pass it would have been difficult to work late. However, he assumed he would have found a way to do so in any event because of his responsibilities to Telus. He used his vehicle to drive to and from the airport and was reimbursed. Usually, he arrived at work between 7:00 and 7:30 a.m. to facilitate conference calls to people in central Canada in a different time zone and stayed until 5:30 or 6:00 p.m.. Harrington agreed he had never negotiated with Telus to receive a free parking pass as part of his compensation.

[25] Harrington was cross-examined by Kerry Boyd. Harrington stated that if he had not been provided with the parking pass he would have paid for parking elsewhere. He understood the peak hours of bus service encompassed a two-hour period each morning and late afternoon. He considered the use of his own vehicle was more convenient and because of unrestricted access to the parking facility, it permitted more flexibility in his work schedule because he lived in southeast Edmonton. When travelling in downtown Edmonton on business, he used the underground portion of the municipal LRT system which was free within certain zones from 9 a.m. to 3:00 p.m.. Harrington agreed there was no formal requirement by Telus that he drive a vehicle for business purposes and stated he travelled by air to out-of-town meetings. In 1998, his vehicle was insured for driving to and from work and for casual business purposes.

[26] (The following facts were admitted by Harrington in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

2. I commenced employment in 1978 with AGT Ltd. which subsequently became Telus.
5. I did not keep or submit to Telus any records of any hours worked or overtime I worked in 1998.
6. I received my parking pass in 1986 when promoted to senior management.
7. Prior to the receipt of the parking pass I drove to work at Telus.
8. Prior to the receipt of the parking pass in 1986, when I drove to work at Telus I parked at various public parking lots and it cost approximately \$50 per month and Telus did not reimburse me for the amount paid.
16. I did not complete a form T2200 for the 1998 taxation year.
18. In 1998, the nearest bus stop to my residence was 2 blocks away.

[27] Donald Barnes was examined by Curtis Stewart. Barnes testified he is Sales Director for See Magazine. In 1998, he was employed by Telus Advertising Services Inc. (TAS) – a wholly-owned subsidiary of Telus - as a Sales Manager – in pay band 4 - responsible for supervising and managing between 8 and 10 sales representatives. TAS was the entity through which the advertising directory – Yellow Pages – was published. Barnes stated over 26,000 customers advertised in the directory and the period from May to the end of October was when the publication was created. He provided training to sales representatives and accompanied them on sales calls. Each representative had 400-450 customers on a list and others known as “inside reps” dealt with up to 1,500 customers, mainly by telephone. Barnes stated September and October were extremely busy as many customers had waited to place their advertisements and certain deadlines were approaching. The actual printing of the Yellow Pages and White Pages directories took 3 months. As deadlines drew near, Barnes stated he worked between 1 and 4 hours overtime for a period of about 50 days in 1998. He used his vehicle to travel on TAS business and had a parking pass - and assigned stall - at the 44 Capital Boulevard building, (44 Capital) 10044-108 Street, Edmonton. He had not negotiated free parking privileges as part of his compensation package. His work required him to travel from one end of the city to the other and he carried a cell phone in his car. In his judgment, the nature of the travel required made it impractical to use taxis. He did not submit expense accounts to TAS for business use of his vehicle. He did not keep records of hours worked but most of the extra time was attributable to work performed during the evening and to time spent by him and sales representatives at the office on Labour Day and Thanksgiving weekend. Barnes worked on the Edmonton Yellow Pages directory. He stated it was very important to have a car available during October. During the months of January and February, the 40-member sales group and the managers were devoted to selling national advertising for placement in other directories of which there were 98 in the western provinces.

[28] Barnes was cross-examined by Kerry Boyd. Barnes stated his understanding that the parking pass was personal, not to be used by others, including Telus employees. Although he never rode to work by public transit, his residence was near a bus route and the LRT station was one-half block from his office building. Between 9:00 a.m. and 3:00 p.m., the LRT was free within the downtown core. Barnes considered it was more convenient to use his own vehicle to travel to and from work. He had not recorded overtime hours worked in 1998 and received a variable pay bonus for job performance during that year. He started working for Ed Tel in 1988 and became employed by Telus when it acquired Ed Tel in 1992. As part of his duties at TAS, he prepared job postings, some of which required the applicant to hold a valid driver's licence. Barnes stated that in carrying out his duties as Sales Manager,



situations arose where he had to leave the office and, because he could not predict when those might occur, it was convenient to have his vehicle in the lot in his building. On occasion, sales representatives used taxis and Telus reimbursed them. Barnes stated there were no free lots in the vicinity of his office in 1998. He was not aware of the reason Telus had issued him a free parking pass.

[29] During re-direct examination, Barnes stated the LRT was not an efficient method by which to visit customers in areas outside the downtown core. In 1998, 65% of all businesses that advertised in the Yellow Pages were situated in southeast Edmonton. Barnes stated he understood the entitlement of employees to a variable pay bonus was tied to the performance of their business unit.

[30] (The following facts were admitted by Barnes in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

6. In 1998, my scheduled workday was from 8:00 a.m. to 4:30 p.m. and my salary was based on a 7.5 hour workday.
15. In 1998 I did not contribute any overtime hours of work to Telus as a result of Telus providing me the parking pass.
17. I did not complete a form T2200 for the 1998 taxation year.
18. If I did not receive the parking pass in 1998 I may have chosen not to drive to work but would have taken the bus or car-pooled instead.

[31] Bruce R. Brandell was examined by Curtis Stewart. Brandell testified he is employed by Epcor Utilities. In 1998, he was employed - by a Telus subsidiary - as a Senior Manager, Corporate Development – in pay band 4 - and worked at Telus Plaza in a group of 7 or 8 people who were involved with acquisitions. Although regular office hours were from 8:00 a.m. to 4:30 p.m., it was normal to work 10 hours per day and when he and his co-workers were in the middle of a transaction, they worked up to 18 hours per day, every day during some weeks, as required. He lived in the Cloverdale area and although he was assigned a parking pass for the lot in Telus Plaza, never used it. He had not applied for the pass and stated that one day it “landed on his desk.” He understood he had been given the pass because his position was in pay band 4. He never informed his superiors that he was not using the pass.

[32] Brandell was cross-examined by Rhonda Nahorniak. Brandell stated he was not paid for working additional hours beyond the normal work week but participated in the variable pay program pursuant to which bonuses were paid to individuals based on the achievement of their work unit. He knew Telus had a policy of reimbursing employees for taxi fares and for use of a personal vehicle. He owned a car in 1998 but

did not use it for business purposes. He stated his Notice of Appeal included material that was generic in the sense it was appropriate for most other appellants and that is the reason it stated that the provision of the parking pass constituted an economic advantage to Telus rather than to him since he had not incurred any taxi fares or other travel expenses associated with use of his private automobile.

[33] Desmond A. Adler was examined by Michael Gemmiti. Adler testified he was employed – in 1998 – by Telus Management Services Inc. – a Telus subsidiary - as Director, Network and Corporate Services, a position within pay band 5. He confirmed his responsibilities were as described in paragraph 2 of the admissions located behind his label in Exhibit A-1, as follows:

As Director, Network and Corporate Services I was responsible for the development, implementation and support of corporate systems (human resources, finance, treasury, and general services departments, as well as legacy system support for other Telus departments and subsidiaries) as well as application of software relating to the Telus fundamental network (applications relating to planning, provisioning, assignment, activation, inside and outside plant records, surveillance, alarming, and trouble management systems), and directed, monitored, and provided overall direction and guidance to approximately 150 personnel including managers, project managers, software specialists, contractors, and support staff.

[34] Adler stated he worked from an office in Telus Plaza, Edmonton and was responsible for 8 managers and a staff of 150, some of whom provided services as independent contractors. Because the year 2000 was approaching, there were compliance concerns throughout the business world. In 1998, Adler lived in Sherwood Park, Alberta and used his vehicle to drive to and from work or to drive to and from Edmonton International Airport, according to entries in his expense sheet. He did not consider his vehicle was needed – in a direct sense – to perform his work and he was not compensated – directly – for working supplemental hours but considered the increased hours had been required to complete tasks within his area of responsibility. His parking pass did not affect his performance except it was more convenient to drive to and from work.

[35] Adler was cross-examined by Rhonda Nahorniak. Adler stated he worked once or twice a month on a weekend. The distance from his residence to the office was 25 kilometres. In 1998, his wife also worked downtown and they rode to work together. About 50% of the time, she dropped him off and then drove to her workplace 10 or 12 blocks away. He never took the bus to work in 1998. The parking pass allowed unrestricted access to Telus Plaza which was particularly useful during a weekend. He acknowledged that without the pass he would have had to pay for equivalent parking

space if he used his car to travel to work. Adler agreed he was under no obligation to bring his car to work and that Telus policy reimbursed employees for business use of a private vehicle. Counsel referred him to an expense report – behind Tab 1 – and to entries pertaining to reimbursement of taxi fares. Counsel pointed out highlighted entries on a printout – Exhibit R-4 – entitled Telus Employee Expense Reports – in which Adler was reimbursed for taxi fares for travel between the airport and his home, a distance of approximately 40 kilometres. In 1998, Telus paid employees 35 cents per kilometre for using their vehicles. Adler recalled the parking charge at the airport was \$10 and agreed that if he had used his own vehicle to travel to and from the airport, the total cost would have been approximately \$40, an amount less than the \$55 and \$52 taxi fares incurred by him for that purpose. Adler stated there were no free parking lots available in downtown Edmonton in 1998.

[36] (The following facts were admitted by Adler in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

6. In 1998, my scheduled workdays were from 8:00 a.m. to 4:30 p.m. and my salary was based on a 7.5 hour workday.
7. Notwithstanding my scheduled hours of work in 1998, I generally worked until about 5:30 or 6:00 p.m. during the weekdays and typically worked on the weekend once or twice a month on either a Saturday or a Sunday and only rarely on both days.
8. I did not work any holidays in 1998.
9. I did not keep or submit to Telus any records of any overtime I worked in 1998.
11. I did not apply for my parking pass as it was provided automatically to me based on my position as Director.
12. I understood that in 1998 it was Telus policy to provide parking passes to employees based upon their position and that employees at the level of Director and above received parking passes.
15. I had access to the parking lot with the parking pass 24 hours per day, 7 days per week in 1998.
16. I did not have an assigned stall within the parking lot but could park in any unassigned parking stall that was available in 1998.
17. In 1998 there was never a time where there were not parking stalls available to me within the parking lot.
20. My position with Telus in 1998 did not require that I have a vehicle in order to perform my job duties.
24. In 1998 I was never required to use my vehicle to perform work duties at all.
26. In 1998 I contributed overtime above my scheduled hours of work in order to complete tasks on a timely basis and not as a result of Telus providing me with the parking pass.

[37] Joanne Beaton was examined by Jasmine Sidhu. Beaton testified she is employed by Telus and in 1998 was a Director, Information and Process Solutions. In that role, she was in charge of various processes and functions. As a result of Telus and Ed Tel combining their business operations, there was a substantial volume of work required to coordinate the two systems. Although Beaton was based in Edmonton, she travelled to other major centres in Alberta. When she began working for Telus, her position was in pay band 5 and she had received a parking pass – free – in 1997 when she assumed the position of Director. Beaton acknowledged it had not been a condition of her employment that she have a vehicle to carry out her duties. Beaton stated the new business environment had transformed Telus – formerly AGT - from a provincially-owned corporation to an entity comprised of a group of companies that carried on a telecommunications business in a highly competitive marketplace. She stated the arrival – from the United States - of a new Telus President led to a cultural change in the workplace. Beaton stated her new position greatly increased her responsibilities both in scope and duration because she was involved in several major projects. Prior to receiving her parking pass, she rode the bus or went to work with her husband in their family vehicle. As a member of senior management, Beaton stated she found the demands were great and that she worked many 12-15 hour days including weekends. She estimated she worked until after 7:00 p.m. 3 days per week and at least 3 Saturdays a month. Because 1998 technology was inadequate – compared to today – it did not permit a significant amount of work to be performed from home due to security and confidentiality requirements so Beaton preferred to work at her office. She used her vehicle to drive to Camrose, Fort McMurray and Calgary and 3 times per week – on average – drove to the airport. At Telus Plaza, she did not have an assigned stall but always found a space. Beaton stated she believed her efforts would be rewarded by advancement within Telus and she received a variable pay bonus. She stated the parking pass permitted her access to work in a secure setting which enabled her to travel to and from work outside regular office hours. The heated parking lot was located in the same building as her office. The pass had been issued to her by the Telus Real Estate Department.

[38] Beaton was cross-examined by Rhonda Nahorniak. Beaton acknowledged there had been no discussion with anyone at Telus prior to receiving the parking pass. She had no written employment contract with Telus. The nearest bus stop was two blocks from her residence but she appreciated the convenience of the parking pass which provided her with a sense of security not afforded by parking at night on the street. Before receiving the free pass, she parked at Canada Place – where her husband worked - at cost of \$140.00 per month and was not reimbursed by Telus. Beaton stated she drove to Camrose – 100 kilometres from Edmonton – and to Red Deer, about 150 kilometres, and to Calgary, but not to Lethbridge and could not recall the

number of trips to these locations. She used her vehicle to attend meetings in Edmonton, some scheduled and some unplanned. She submitted an expense claim to Telus for business use of her vehicle and used a diary to record distances but it is no longer available. She did not know the number of days away from her office in 1998. She did not recall when the second family car was purchased but had used public transit to travel to and from work on some occasions prior to 1998. Beaton stated there was no obligation imposed by Telus that she have a vehicle to perform her duties and agreed the free parking pass saved her the expense of having to pay for parking elsewhere. In her mind, the pass enabled her to work longer hours and provided the ability to perform her duties more efficiently. In 1998, she took taxis from time to time since there was a taxi stand nearby and she was reimbursed for those fares. If she used her vehicle and had to pay for parking at some location, she was reimbursed by Telus. Counsel referred Beaton to a bundle of expense reports – Exhibit R-5 – for 1998 - in which she had claimed reimbursement for 22 taxi fares, according to the highlighted entries. Beaton agreed Telus had been unable to provide specific reasons or criteria underlying the provision of her parking pass.

[39] (The following facts were admitted by Beaton in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

5. I did not keep or submit to Telus any records of any hours worked or overtime I worked in 1998.
7. Telus provided me the parking pass as part of my benefits as a Director.
16. I did not complete a form T2200 for the 1998 taxation year.

[40] Mary-Patricia Barry was examined by Jasmine Sidhu. Barry testified she is employed by the City of Edmonton as a Manager, Communications Branch. In 1998, she worked for Telus as a Director – Telus Leadership and Learning, Human Resources at the Telus Plaza in Edmonton. Her position was in pay band 5 and she received a parking pass in July, 1996, upon assuming her role as Director. Her division had an annual budget of \$7 million and a staff of 65. Barry stated she understood the parking pass had been provided to her – without cost – as result of attaining the level of Director and that it was for the purpose of enabling her to carry out her duties. Although the regular work week consisted of 37.5 hours, she worked from 2 to 4 hours extra per week and sometimes on Sunday. Telus policy was to pay employees a bonus if certain business objectives were attained. Her mandate was to provide high-quality training to 13,000 Telus employees and classrooms were used to deliver 20,000 student-days of instruction in 1998. Barry stated she was not required to use her vehicle, *per se*, in the course of her job but it was convenient because she travelled to locations both in and out of Edmonton. There was no requirement that she

hold a valid driver's licence to perform her duties as Director. She estimated she used her vehicle between 6 and 8 times a month for business purposes.

[41] Barry was cross-examined by Rhonda Nahorniak. Barry acknowledged her residence – in 1998 - was only one block away from a bus stop. She agreed that attaining the level of Director was the reason she was issued the parking pass and that she could have used other transportation. On occasion, she hired a taxi but it was more efficient to use her vehicle to transport learning materials and equipment to training sessions and Telus reimbursed her at the rate of 35 cents per kilometre. In her opinion, it was more efficient to drive to work and to park in the lot at Telus Plaza by using her pass. She was not aware of any free parking lot in the downtown area in 1998. Without the parking pass, she would have examined other options for parking but still would have used her car to travel to work rather than take public transit.

[42] (The following facts were admitted by Barry in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

6. I did not keep or submit to Telus any records of any overtime I worked in 1998.
16. I provided overtime hours to Telus in 1998 in order to achieve objectives and business results for which I could be recognized, and the parking pass supported and facilitated this.
17. I did not complete a form T2200 for the 1998 taxation year.
20. In 1998 I used the parking pass very occasionally (perhaps 1 or 2 times in 1998) to attend an event or park downtown for personal reasons unconnected with my employment.

[43] Randy Bayrack – examined by Curtis Stewart – testified he is a realtor but was employed by Telus – in 1998 – as an IT Project Manager – pay band 4 - at the 107 Street and 100 Avenue – Edmonton office. He worked in the advanced communication unit which provided ADSL connections to the Internet and assisted various Telus business units to understand the advantages to customers of this new product which was faster than dial-up and afforded the opportunity to use one telephone line for voice and data. At first, there were not many employees in his business unit but later he managed 50 people, many of whom worked in the ADSL category. He had been an employee of Ed Tel since 1979 and had a parking pass for the facility at 107 Street and 100 Avenue. He used his vehicle for business and drove to Calgary once a week, on average. He was reimbursed by Telus on a per-kilometre basis. He had not applied for the parking pass and, before receiving it, had driven to work. Owing or operating a vehicle was not a job requirement but he believed it increased his efficiency and allowed him to accomplish more work and to get home faster. As a salaried employee, he often worked before 8:00 a.m. and after 6:00 p.m..

and typically worked at the office on Saturday and from home on Sunday. He had a written agreement with Telus Advanced Communications that he could continue to enjoy the privilege of the parking pass issued to him while an employee of Ed Tel. Bayrack stated he had always been able to find a parking space in 1998.

[44] Bayrack was cross-examined by Kerry Boyd. Bayrack agreed there was bus service available two blocks from his residence in Mill Woods subdivision but considered it was more convenient to drive his vehicle particularly before and after peak hours. The LRT station was close to his office. He did not keep a record of hours worked in 1998. He used his vehicle for business purposes in Edmonton and if he parked in Telus Plaza he had to pay for the privilege since his pass was not authorized for that facility. He drove to meetings in Red Deer but flew to Calgary after having driven to the airport. He agreed he could have taken a taxi and claimed the fare on an expense account. During some extremely busy periods lasting up to 3 weeks, he worked until 1 a.m. or later and drove home. He estimated the cost of a taxi from his office to home would have been at least \$30.

[45] (The following fact was admitted by Bayrack in this numbered paragraph of the admissions found behind his label in the binder, Exhibit A-1.)

16. I did not complete a form T2200 for the 1998 taxation year.

[46] Randall Lee Edgar was examined by Michael Gemmiti. Edgar testified he is an accountant. In 1998, he was employed by Telus Management Services Inc. – a subsidiary of Telus – as a Corporate Financial Analyst in pay band 4. He started working for AGT in 1987 and continued with Telus after the takeover where he carried out financial planning and dealt with debt issues involving bond rating agencies, securities documentation, preparation of annual reports, filling requirements of the CRTC and matters relating to mergers and acquisitions. He was aware of the taxable benefit issue arising from provision of a parking pass because he was a friend of Dan Chow who also worked at Telus Plaza and had won his appeal from an assessment by the Minister. Edgar stated he had not used his vehicle for business in 1998. Although he had recorded overtime worked up to the end of February, he had not continued for the remainder of 1998. The additional hours of work were required to meet certain filing deadlines set by regulatory agencies. He did not apply for the parking pass and it had been handed to him by his executive assistant. He did not have an assigned stall but there was always a space available in 1998. He took a bus to work before receiving the parking pass but realized he could work an extra hour a day by driving his car to and from the office. At most, he used the parking space two or three times for personal reasons in 1998.

[47] Edgar was cross-examined by Rhonda Nahorniak. Edgar identified certain entries in his diary – Exhibit R-6 – for January and February in which he recorded hours worked including during weekends. He acknowledged it was not a condition of his employment with Telus – in 1998 - that he own a car or hold a valid driver's licence. He could not recall any instance in which he used his vehicle for business purposes during that year. He received a variable pay bonus with respect to his performance in 1998 and agreed with the statement in the Telus guideline that “[I]ndividual performance is not a factor in the payout.” Edgar received his bonus by direct deposit in accordance with the statement filed as Exhibit R-7. He stated he had assumed the parking pass was to facilitate him working additional hours during certain periods as it was more convenient to drive to work earlier or stay later when bus service was less frequent. Although he had ridden the bus to work for many years and was accustomed to that form of transit, he did not use public transit in 1998 even though the service to his residential area was adequate. He did not recall having taken a taxi for business in 1998. He stated if he had not received the free parking pass he would have had to perform whatever amount of work was necessary to meet the strict deadlines for filing certain documentation.

[48] Roy Albert Viteychuk was examined by Jasmine Sidhu. Viteychuk testified he is an instructor at Northern Alberta Institute of Technology (NAIT). In 1998, he was employed by Telus as a Manager, Switch Maintenance and Analysis, in pay band 3. He started working with Ed Tel in 1970 and stayed on to work for Telus after the merger in 1996. In 1998, he was responsible for approximately 40 employees who were technicians dealing with upgrades, fault corrections and surveillance of the overall system every moment of the year. The switching equipment was situated inside 8 central offices or hosts. Due to emergencies in 1998, Viteychuk stated he believed he worked more hours than normal but does not know how many days, weekends or holidays or the number of hours per day he worked during that year. He stated the electronic components fail from time to time and despite a back-up for many systems, there are occasions when some event can cause between 20,000 and 80,000 telephones to be out of order. He worked from an office at 104 Street and 104 Avenue and received his pass when transferred there but cannot recall the date. Prior to receiving the pass entitling him to an assigned stall, he drove to work and parked in other lots operated by Telus for which he paid \$13.85 every two weeks. He did not use his free pass for personal reasons but could lend it to other Telus employees. His position with Telus did not require that he have a vehicle. He does not know how often – in 1998 – he used his vehicle during the course of his employment but had transported spare equipment to sites, as needed. He was a member of the Disaster Recovery Team and it was advantageous to have his vehicle parked at work so he



could access it quickly even though at the Main Wire Centre there were two Telus vehicles available. However, if both were being used, he could use his own vehicle to carry equipment or replacement circuit packs.

[49] Viteychuk was cross-examined by Kerry Boyd. Viteychuk stated Telus operated according to the “N plus one” philosophy common within the telecommunications industry. The idea of having his car available for an emergency was his own, not a directive from his superiors. He parked in a heated, underground, assigned stall and agreed there were no other comparable facilities available without charge. He stated he could have taken a bus to work since the bus schedule was adequate. During working hours, he often used one of the two Telus vehicles, if available. He was aware of Telus policy to reimburse employees for business use of a personal vehicle but could not recall whether he submitted an expense claim for that category in 1998. Viteychuk stated that without the free parking pass, he may not have driven to work but would have used the shuttle bus between his home in Sherwood Park and his Edmonton office.

[50] (The following fact was admitted by Viteychuk in this numbered paragraph of the admissions found behind his label in the binder, Exhibit A-1.)

24. In 1998 I did not contribute any overtime hours of work to Telus as a result of Telus providing me the parking pass.

[51] Carol Amelio was examined by Curtis Stewart. Amelio testified she is a lawyer, employed by a pharmaceutical company in Edmonton. In 1998, she worked for Telus as a Director, Customer Relations. She confirmed her duties were as stated in paragraph 2 of her admissions in Exhibit A-1:

As Director, Customer Relations, I was responsible for managing three separate inbound call centres (in three different cities), effectively and efficiently resolving customer complaints and concerns for the Telus group of companies (excluding Telus mobility), investigating and resolving customer complaints on behalf of the CEO and senior executives of residential and business services, analyzing customer feedback to identify root causes of key issues and recommending problem prevention strategies and customer satisfaction improvement plans, and communicating trends in customer feedback to the organization monthly as a catalyst to drive process improvement efforts.

[52] Amelio worked in Edmonton at Telus Plaza in a specialized contact centre for complaints, investigations and responses. Her position was in pay band 5 and she supervised employees who provided service every day of the year, including those

working from an office in Calgary. It was Telus policy to respond to a customer complaint within 24 hours and to provide a full answer to an inquiry within 48 hours. Her conservative estimate of hours worked – in 1998 – was 50 hours per week but she did not keep nor submit to Telus any records of overtime worked in addition to the regular work week of 37.5 hours. The volume of work fluctuated and some weeks required more than 50 hours. She was not compensated specifically for working supplemental hours but the Telus corporate structure was such that nearly everyone - particularly at senior levels - worked long hours. There had been layoffs in 1993 – and a hiring freeze imposed - but the amount of work was the same and remaining employees had to work harder. She received her parking pass in 1992 when she started working for the Telus group of companies. She had 5 managers reporting to her and had to perform quarterly reviews. Amelio stated she considered the pass had facilitated working late because she could park inside and enlist the aid of a security person to walk her to the car. Because she had 3 children, she chose to stay later at work instead of bringing work home. She was never instructed by Telus that she had to have a vehicle to perform her duties and the car was used – primarily - to travel to and from work, although she did drive to certain locations to conduct investigations or to visit complainants. In 1998, the nearest bus stop was two blocks from her residence. In 1992, when she was interviewed for a Legal Counsel position, that pay band did not entitle her to a parking pass but the General Counsel requested one in any event and it was issued to her by the Telus Real Estate Department. She lost her pass once and a replacement was issued by the same department.

[53] Amelio was cross-examined by Kerry Boyd. Amelio stated it was more convenient to drive her car to work and an important aspect of the parking pass was the security afforded by the underground, lighted facility with “panic buttons” installed at various places. In her opinion, public transit was not a viable alternative but agreed she could have used taxis for early or late travel from her home in Riverbend, south-east Edmonton. She did not have a scheduled start time in the morning and did not record hours of work in 1998 nor did she submit any time sheets to Telus. She did not have to own or operate a car in order to perform her job but used it 3 or 4 times a week to accommodate working beyond regular hours. She went to Calgary with commercial airlines and drove her car to the airport or took a taxi. Sometimes, on returning from Calgary she went to the office before going home. She worked at 44 Capital which was close to the Corona LRT station and from time to time used the system in the downtown area but when she had to carry “an armload of materials” she used her car. Telus reimbursed her for taxi fare. There were no other free parking lots available in 1998 and it was difficult to find any space since nearby facilities were usually full.

[54] Curtis Stewart, counsel for the appellants advised the Court the appellant – Henry P. Lazarenko – was in Florida and would not be testifying. However, since all appeals proceeded on the basis of common evidence, Lazarenko wanted his appeal to remain in force.

[55] (The following facts were admitted by Lazarenko in these numbered paragraphs of the admissions found behind his label in the binder, Exhibit A-1.)

1. In 1998, I was employed by Telus as a General Manager of Engineering and Construction.
2. I commenced employment with Ed Tel, the predecessor of Telus, in 1965.
3. In 1998 I resided at 6125 – 157A Avenue, Edmonton, Alberta.
4. In 1998, my pay band with Telus was pay band 5.
5. In 1998, my scheduled workday was from 8:00 a.m. to 4:30 p.m. and my salary was based on a 7.5 hour workday.
6. In 1998, I never worked beyond my scheduled hours of work.
7. I received my parking pass in 1990 when working for Ed Tel.
8. I did not apply for my parking pass.
9. My parking pass was for the parking lot located at the 44 Capital Boulevard building located at 10044 – 108 Street in Edmonton, Alberta.
10. I had access to the parking lot with the parking pass 24 hours per day, 7 days per week in 1998.
11. I had an assigned stall within the parking lot in 1998.
12. My stall in the parking lot in 1998 was stall 55.
13. I did not pay Telus for use of the parking pass.
14. In 1998, it was not a condition of my employment with Telus that I had to have a vehicle to perform my work duties.
15. In 1998, I received a monthly vehicle allowance from Telus in the amount of approximately \$120 per month.
16. In 1998 I did not submit expense reports to Telus in respect of the use of my vehicle.
17. Prior to receipt of the parking pass, I either drove to work or took public transportation.
18. Prior to receipt of the parking pass, when I drove to work I parked at a local parkade, paid for parking, and was not reimbursed for the cost of parking.
19. If I did not receive the parking pass in 1998 I think I would have still driven to work and paid for parking.

[56] Counsel stated that pursuant to the admission contained in a letter dated December 29, 2006 - in Exhibit A-1 – Tab A – at the back of the binder, the appellants accepted the fair market value of the parking space in each of the 5 facilities as attributed by the Minister to an individual appellant in the 1998 taxation year.

[57] The appellants closed their case.

[58] Sharon Verenka was examined by Kerry Boyd. She testified she works as an Administrative Assistant but was employed for 12 years - until 2001 – by Telus. In 1998, she worked in the Real Estate Department with 3 others, all of whom reported to Harold Latham. Their job was to administer the issue of parking passes to Telus employees - for facilities inside 3 building in Edmonton – who were at or above a certain pay band or held the title of Director. There was a waiting list of applicants for a parking spot for which they had to pay. As a result of a merger with – or acquisition of – Ed Tel by Telus, the parking passes of certain employees were “grandfathered” even though the holders thereof were not in a pay band that would have entitled them – automatically – to a parking pass in accordance with Telus policy. Verenka identified an application for a parking stall – Exhibit A-1, tab 6 – and another similar form – tab 7 – that was modified to include the admonition that the assigned stalls and passes were not to be “sub-leased, re-assigned or transferred by the Renter at anytime, and so doing will result in the immediate loss of parking privileges without notice.” In order to issue a parking pass to a Telus employee not covered by the grandfathering provision, said employee had to be in pay band 5 and above. In that case, Verenka stated her department did not need to know the job description of the applicant nor whether the individual would be working overtime nor if they required a vehicle to perform their job. The same criteria applied to all parking facilities. The pass could be used for personal reasons and could be loaned for a limited period to another Telus employee provided notice was given to Verenka’s department. The Telus Real Estate Department charged a monthly fee for each pass and billed – internally – the division or business unit in which the pass holder was employed.

[59] Verenka was cross-examined by Curtis Stewart. She stated she did not know why employees in pay band 5 and above automatically received parking passes nor was she privy to the nature of duties performed by them. She administered the parking guidelines and policy. The monthly fee was charged to the cost centre which was later attributed to a section, group, or department within the Telus organization. She stated a parking pass was specific to a particular parking facility.

[60] Douglas Brian Connor was examined by Kerry Boyd. Connor testified he has worked for Edmonton Transit System (ETS) for 30 years. He is a Scheduler, responsible for the bus service for every day of the year, including holiday periods and special events. Connor referred to an ETS Ride Guide, Fall & Winter 1998/99 – Exhibit R-8 – that included general information about fares, links and other matters. The Guide was issued twice a year and contained 3 maps, titled Day Map, Late Night Service, City Centre Service and included a Route Frequency Chart. Each map had a

legend dealing with items such as basic service, peak hour and late night service, bus zones, and related topics. Connor referred to an enlarged copy of the Day Map – Exhibit A-9 – on which the colours magenta and blue denoted peak service and basic service hours, respectively. The boxes with various numbers inside indicated the numbers of the buses that would arrive – at some point – at that location and whether a stop is also an LRT station. The Late Night Service map - part of Exhibit R-8 - illustrated the route structure after 10:00 p.m. on weekdays as well as during weekends and on holidays. Connor stated ETS attempts to provide bus service to residents within a range of 800 metres of their homes. The City Centre Service Map – also part of Exhibit R-8 – shows the downtown core and the location of LRT stations which are underground. The black dots thereon enclose an arrow to indicate direction of travel. The Route Frequency chart illustrated the routes and the frequency of service by using appropriate symbols to impart information to the reader, including the use of the symbol “ - ” within a space to indicate no service during that time period. Connor stated that a Book of Routes – Exhibit R-10 – effective August 30, 1998 - was available to members of the public. The scheduling of routes is based on the season and by September all buses are operating because schools and universities are in session. At the end of the university scholastic year and at the end of June when schools close for the summer, certain adjustments are made to the bus service. During the summer, the service on some routes is scaled back, mainly on those which carry a high number of students. One section within ETS deals with requirements for special events. Connor referred to Exhibit R-10, tab 8, pp. 1 and 2, pertaining to a large area called Route 8. The map uses letters A B C, etc. as symbols to denote timing points and the express service on certain routes is indicated by using the symbol listed in the legend. The weekday schedule for Route 8 is listed on pp. 3 and 4 shows timing points and times of departure from a particular stop. Connor stated there is a route extension service on some routes that offers less stops on the way downtown from an area such as Mill Woods. The Saturday schedule for Route 8 is at p. 5 within Tab 8 and schedules for Sunday and holidays are included in the subsequent page followed by a page with all Route 8 bus link numbers providing location of stops and direction of travel. Connor stated information was available in 1998 via touchtone telephones through which a user could access automated schedule information by entering a 4-digit code. Connor stated that an extract from the guide – Exhibit R-11 – pertained to Route 35, a late-night route which operated after 10:00 p.m. prior to August 31, 1998 when it was replaced by Route 325. Connor stated he used his computer equipped with appropriate software to produce maps in the context of a particular residential address. The bundle of sheets were filed as Exhibit R-12. The software – identified by the acronym SLIM – was available in 1998 to personnel in departments of the City of Edmonton to identify various installations. Connor utilized the program to locate bus stops, marked with a small circle. On separate sheets - within Exhibit R-

12 – he identified the address of the Edmonton residence of each appellant in 1998, as follows:

- p. 1: Carol Amelio – 714 Burley Drive NW
- p. 2: Douglas Alloway – 3 Blue Quill Crescent NW
- p. 3: Donald Barnes – 7208 -100 Ave. NW
- p. 4: Mary-Patricia Barry – 16045 – 123A St. NW
- p. 5: Randy Bayrack – 3640 – 30 St. NW
- p. 6: Joanne Beaton – 8704 – 142 St. NW
- p. 7: Myron S. Borys – 8703 – 42 Ave. NW
- p. 8: Bruce Brandell – 9607 – 96 St. NW
- p. 9: Randall L. Edgar – 72 Ekota Crescent NW
- p. 10: John Harrington – 21 Greenoch Crescent NW
- p. 11: Henry Lazarenko – 6125-157A Ave. NW

[61] Connor referred to Exhibit R-12, p. 1, a map of the neighbourhood where Carol Amelio lived in 1998 and to nearby Bulyea Road which was serviced by Routes 30 and 31 and by Route 35 later in the evening. The frequency of service to Mill Woods was high because it was a highly populated area. The first two routes connected to Southgate where a passenger could transfer to Route 9 to proceed downtown or could choose a bus on Route 17, an express route. The map on p. 2 of said exhibit, is a map of the area where Douglas Alloway lived. There were 2 bus stops on 28 Ave. near to the Alloway residence at 3 Blue Quill Crescent. The map on p. 3 – relevant to Donald Barnes - indicates there were 2 stops on 101 Ave. on Route 1 that were serviced every 15 minutes during peak hours and every 30 minutes during the rest of the day in 1998. The residence of Mary-Patricia Barry at 16045 – 123A St. – illustrated on the map at p. 4 - was closest to Route 162 on 121 St. and the buses went downtown from there. Also Route 16, about one and one-half blocks from her home provided service until 1:00 a.m.. Connor stated the map – p. 5 – refers to the residence of Randy Bayrack at 3640 – 30 St. NW which was situated in a neighbourhood serviced by 3 different routes that – in combination – provided service within a 15-minute period due to overlapping schedules. The buses ran down 31A St. and transported passengers to one of two transfer points for continuation to downtown. During peak hours, the buses on Routes 69 and 72 ran in both directions along the street and ended up at the same transfer point so one could take whichever bus arrived first. Joanne Beaton lived at 8704 – 142 St. NW, as shown on the map on p. 6. There was a stop within a block and Route 112 provided service to downtown every 15 minutes during the day until evening when it became Route 115 with service every 30 minutes. Myron S. Borys lived at 8703-42 Ave. - map on p. 7 – and his area was serviced by Route 66 which ran every 15 minutes before 10:00 p.m. and every 30 minutes thereafter. The closest stop for Borys was at Millbourne Road NW and 42A Ave., about two blocks from his

house. The map on p. 8 shows the residential area in which Bruce Brandell lived in 1998. His house at 9607-96 St. NW was serviced by Route 85 with a stop two blocks away. That area is close to downtown and the buses running on Route 85 during the day and Route 86 at night provided frequent service. Randall L. Edgar's residence is shown on the map - at p. 9 - at 72 Ekota Crescent NW. Route 64 made 5 trips downtown in the morning and 8 returning in the afternoon. Edgar's closest bus stop was on Knottwood Road E, about 3 ½ blocks away. The area was also serviced by Route 8 which took passengers to a transfer point at Lakewood. Connor stated Edgar could have taken a bus from 102 St and 102 Ave. - near Telus Plaza - at 9:38 p.m. and transferred to a 10:13 p.m. 76 bus at Lakewood and arrived at the stop near his home at approximately 10:23 p.m.. By so doing, Connor estimated the entire trip from downtown bus stop to Edgar's door would have been less than one hour. In 1998, John Harrington lived at 21 Greenoch Crescent NW as depicted on the map at p. 10. The closest bus stop was at 40 Ave. and 55 St. on Route 60 which went to Millgate. The buses on that route made 7 trips downtown in the morning and 5 back in the afternoon. At night, the area was serviced by Route 75 which ran every hour until 10:00 p.m. but the last stop was further from Harrington's residence. Connor stated that to arrive at the stop nearest to his house, Harrington would have had to arrive at Lakewood in time to catch the 10:15 p.m. bus. Henry Lazarenko lived at 6125 - 157A Ave. NW, shown on the map - p. 11 - and his neighbourhood was on Route 181 which ran along 156 Ave. and provided service every 30 minutes from 2 bus stops located less than 800 metres from the Lazarenko residence. However, there was no service on those routes after 6:00 p.m. and he would have had to take the LRT at 5:48 p.m. from downtown in order to be on the last bus on Route 181. Otherwise, he would have a one and one-half kilometre walk to his home. Connor stated that many people in that area drove their vehicles to the Park 'N Ride lot and parked - free - during the day. Connor stated the cost of an adult monthly transit pass - in 1998 - was \$50.00 and the adult cash fare was \$1.60 per trip. The LRT downtown was free between 9:00 a.m. and 3:00 p.m..

[62] Connor was cross-examined by Curtis Stewart who referred him to Exhibit R-12 and to the Route Frequency chart in Exhibit R-8. Using a trip home by Carol Amelio as an example, Connor also referred to the Book of Routes - Exhibit R-10 - and stated if she left downtown at 9:00 p.m. - southbound on Route 9 - she would have arrived at Southgate at 9:51 p.m. and at the stop nearest her home at 10:06 p.m. - 65 minutes after departing from downtown - and would walk home. Connor stated most routes had peak service until 6 p.m.. With respect to Douglas Alloway - 3 Blue Quill Crescent NW - p. 2 of Exhibit R-12 - Connor stated Alloway could leave downtown at 9:01 p.m. and travel on Route 9 to Southgate, arriving at 9:45 p.m., in time to take the bus for a 12-minute ride to the stop nearest home.

Connor pointed out the departure time from the transfer point is important as wait times vary depending on the route. Connor estimated that during this evening period, it would take about 15-20 minutes to drive from downtown to Southgate. With respect to service available to Donald Barnes - p. 3 map – Connor stated he could have taken a bus - running every 30 minutes - from a stop one block from Telus Plaza at 9:24 p.m., and arrived home by 9:38 p.m.. Connor stated Mary-Patricia Barry could have used Route 9 from downtown which was serviced every 15 minutes. By taking the bus at 9:08 p.m., she would have arrived at Northgate 32 minutes later and then transferred to 16 bus at 10:00 p.m. which arrived at the stop nearest her home at 10:19 p.m. Connor estimated the same trip home by car would have taken about 25 minutes. Connor calculated the amount of time required for Randy Bayrack to travel home at night by public transit. By leaving the downtown stop at 9:08 p.m., he would have arrived at Millgate at 9:30 p.m. and then taken bus 78 – at 10:15 a.m. - to arrive at the stop nearest home 15 minutes later. Connor estimated the same trip by car would take about 25 or 30 minutes. Joanne Beaton lived in an area serviced by Route 1. Connor stated that if Beaton left 101 St. and Jasper Ave. at 8:58 p.m., she would arrive at the stop at 142 St. and Stony Plain Road at 9:26 p.m., just in time to watch the 115 bus drive away without her. The next bus would not arrive until 10:12 p.m. – 44 minutes later - and she would have a 5-minute ride to the stop nearest her home, leaving her with a short walk. In Connor’s opinion, it would have been faster for Beaton to walk home from the 142 St. stop rather than waiting for the next bus. He estimated the same trip by car would take about 15 minutes. Connor outlined the best route home – by public transit – for Myron Borys whose residence is shown on the map at p. 7 of Exhibit R-12. By leaving downtown – 102 St. and 102 Ave. - at 9:08 p.m. he would arrive at Millgate station by 9:30 p.m. and then take the 66 bus at 9:45 p.m. which would drop him off at the stop nearest home 6 minutes later. In Connor’s opinion, Borys would not have saved much time by driving home as the buses did not make many stops at that time of night. The projected route and duration of travel relevant to Randall L. Edgar - 72 Ekota Crescent NW - was dealt with by Connor in his direct examination but he had not mentioned the option open to Edgar to leave downtown at 9:08 p.m. and arrive at Lakewood by 9:43 p.m. and transfer to a 64 bus which would take him to his home at about 9:55 p.m. which amounted to less travel time than via another route. Connor stated that John Harrington could have travelled from his home at 21 Greenoch Crescent NW – on map at p. 10 – on the 9:08 p.m. bus from downtown, arriving at Millgate at 9:30 p.m. and taking 60 bus at 9:31 p.m. to his home stop by 9:40 p.m.. Connor stated most bus drivers waited until the Route 8 bus arrived at the station but some did not which meant those passengers had a longer wait. Connor stated transit riders were advised to choose the most efficient travel times because an earlier departure sometimes turned out to be a longer trip. Connor estimated that Harrington evening trip would take 25 minutes by car. Connor stated



the residence of Henry Lazarenko at 6125 – 157A Ave. NW. – on map at p. 11 – was located in an area that would make it very difficult to take the bus after 6 p.m.. Connor stated that while ETS makes every effort to provide a safe environment for both its passengers and drivers, problems sometimes arise due to unruly or criminal behaviour by some transit users. The LRT is staffed by unarmed security personnel.

[63] Harold Latham was examined by Kerry Boyd. Latham testified he is employed as a Purchasing Agent for Elk Island Public Schools. In 1998, he worked for Telus as Manager, Client Services, a division of the Real Estate Department. He had been employed with Ed Tel - since 1978 - as a buyer. In 1996, he became Manager at Client Services and had 6 people reporting to him - including Sharon Verenka - and was responsible for Telus parking services from Red Deer north. He reported to the Director of Real Estate Services. Latham stated that at Ed Tel, parking was on a first-come, first-served basis and the parking lots were outside except for 6 or 7 stalls at the Main Wire Centre and the lot inside the building at 44 Capital. Ed Tel had collective agreements with the union that included parking privileges for employees at a certain rank. The merger of Ed Tel with Telus caused turmoil and a new Telus parking policy was developed which considered various factors including the pay band of the employee and the location of the facility. A condensed – one-page – statement of policy was handed out to Telus employees. Previous rankings of employees at Ed Tel – known as levels – became pay bands in the new Telus system. Although only some employees in pay band 4 received parking passes, all employees in pay band 5 and above were issued with passes. There were some free passes issued to others who qualified pursuant to a grandfather clause. Latham stated his department charged the sum of \$189 per month by billing the appropriate cost centre responsible for the employment of the pass holder. All surface parking lots operated by Telus in Alberta were free. Telus employees submitted an application form on which they provided details of the vehicles to be used and stated therein the pay band applicable to his or her position. He identified the older version of the form – Exhibit A-1, tab 6 – and the replacement at the following tab. Latham stated his policy was to put applicants on a waiting list even if they were in a higher pay band than someone who already held a pass or an assigned stall. Latham stated he presumed that – somehow – each employee paid for parking within the context of what was referred to within the organization as “Telus dollars” in the sense there was no real exchange of money but merely entries in an internal accounting mechanism. From time to time, Latham’s department established fair market values for parking but the intent was not to generate any profit from the provision of parking to employees. If there was no space available within Telus Plaza for an employee who was entitled to a free parking pass, Telus rented a space in a nearby facility owned or operated by an independent entity such as Expert Parking Inc. in accordance with an agreement like the one in Exhibit A-1 at tab 3.

Expert Parking Inc. also operated the gate for the portion of the facility open to the public for pay parking. Latham stated the inside facilities were equipped with cameras and panic buttons at various locations and security guards could be summoned but there were no security personnel specifically assigned to any parking facility. The policy was to escort female employees to their vehicle within a distance of 8 blocks if they had to park in an outside lot or on the street. Prior to issuing a parking pass, Latham stated there was no consideration of factors such as the nature of the position nor any requirement to work overtime. The pass was effective for every hour of every day of the year.

[64] Latham was cross-examined by Mr. Curtis Stewart. Latham stated he allocated the cost of a monthly pass to a specific department and did not know whether employees within the qualifying pay bands paid real dollars for the parking privilege by way of deduction from salary or otherwise. However, he confirmed that no employee paid for any surface parking in any lot owned by Telus.

[65] Counsel filed – as Exhibit R-13 – the affidavit of Richard Grajkowski, Coordinator of Route Analysis and Safety Inspections at Strathcona County Transit in Sherwood Park, Alberta. The affidavit of Doug Morgan, Manager of Service Design, Calgary Transit was filed as Exhibit R-14. The Request to Admit Facts was filed as Exhibit R-15 and Read-Ins of the Respondent were filed as Exhibit R-16.

[66] The respondent's case closed. The appellants did not adduce any rebuttal evidence.

[67] Curtis Stewart, counsel for the appellants submitted the primary issue before the Court was whether the parking provided by Telus to the appellants constituted a benefit to them within the meaning of paragraph 6(1)(a) of the *Act*, since that provision requires employees to include in income those amounts that are not salary or wages pursuant to subsection 5(1) of the *Act*. The difficulty arises in determining the value of any benefit which must be measurable in monetary terms. Counsel conceded the parking passes were provided to the appellants by Telus – and received by them – in the course of their employment. However, counsel submitted the term “benefit” is not defined in the *Act* and there is jurisprudence which supports the appellants' position that the parking passes did not confer an economic benefit on them because the provision of the parking was primarily for the benefit of Telus and any personal enjoyment accruing to any appellant was incidental to the overarching Telus business purpose. In counsel's view, the parking provided by Telus was not a material acquisition which conferred an economic benefit on any appellant because it did not increase a recipient's net worth if one took the whole of the transaction into

account. Further, counsel submitted the law is clear that a payment made primarily for the convenience of the employer will not be taxable in the hands of the employee. As a consequence, it is important to determine who is the primary beneficiary of such payment. Counsel referred to two decisions of the Tax Court of Canada (dealt with later in these reasons) in which the Court held the provision of a free parking pass – by Telus – to employees did not confer a taxable benefit. In another case involving employees of Saskatchewan Telecommunications (SaskTel), the Tax Court judge found the provision of parking was more beneficial to SaskTel than its employees and the employees had not received any taxable benefit with respect to the parking privilege extended during that 70% portion of their employment when their vehicle was not needed for business purposes. Counsel submitted the evidence was clear that the provision of free parking passes to the appellants by Telus was open and above-board in accordance with stated policy and was not a means by which to disguise extra remuneration. In addition, the evidence demonstrated the provision of parking primarily benefited Telus because of the nature of the duties performed by the appellants, all of whom had substantial responsibilities and a heavy workload as a consequence of either holding a position in pay band 5 and above or – if in pay band 4 – also performing duties that required them to arrive early, work late or to work a significant amount of overtime not only during the week but on some holidays and weekends. Counsel submitted it was apparent the availability of parking pursuant to the pass privileges allowed the appellants to carry out their duties in an efficient manner because of the flexibility of a work schedule inherent in the parking arrangement. Counsel submitted it was Telus – overall – that benefited from the parking pass because it permitted senior personnel to have ready access to their vehicles for business purposes and facilitated their ability to work beyond normal business hours during an extremely busy period in Telus corporate history and that Telus had made a business decision to provide free passes to certain employees. Counsel pointed out Telus policy was to reimburse employees for taxis and for use of personal vehicles and that senior management in each Telus department or business unit decided who would receive a parking pass.

[68] Rhonda Nahorniak, counsel for the respondent, submitted the position of the Minister was clear. The provision of free parking was a perquisite, received in the course of employment and constituted a taxable benefit. In her view of the evidence, the appellants were not required by Telus to use their vehicles for business purposes and were able to hire taxis or other forms of transportation and to be reimbursed. Since Telus had not made it a condition of employment of any appellant that he or she have a vehicle or hold a valid driver's licence, it was apparent the parking passes had real monetary value since the appellants would have had to pay for parking in a similar facility. In her view of the jurisprudence, that was a benefit of significance that

satisfied the *de minimus* test applied in cases where the real worth of a benefit enjoyed by an employee was trivial, not worth measuring for purposes of inclusion into income. Counsel submitted an annual free parking pass had substantial fair market value and that those appellants who used it enjoyed the convenience, comfort, and security afforded by 24-hour, year-round accessibility to a parking facility rather than using public transit. Since the cost of travelling to and from work – without more - is not deductible under the *Act*, counsel submitted parking costs are just another expense associated with employment whether one works regular hours or overtime. Counsel conceded the Minister should not second-guess the business acumen of Telus but the evidence made it clear the only demonstrable criteria utilized by Telus prior to issuing a parking pass was the recipient's rank or placement within a pay band unless he or she otherwise qualified pursuant to a grandfathering arrangement arising from the merger of Ed Tel and Telus. Counsel submitted the Tax Court decisions relied on by the appellants arose in relation to the 1994 taxation year during which the Telus policy was different – as set out in paragraphs 3 of the Global Admissions – and the relevant facts in those cases were not present in the within appeals. Counsel conceded Dan Delaloye was in a different position than other appellants in that he did use his vehicle – leased for him by Telus - for business purposes 95 days a year as recorded in a mileage log and that Bruce Brandell - who never used the pass – was at the other end of the spectrum. However, the rest of the appellants clearly enjoyed a benefit that was far from being merely incidental. Counsel referred to the agreement with counsel for the appellants concerning the fair market value of the stalls utilized by the appellants and submitted there had been no evidence adduced to permit the Court to arrive at any other value whether based on the cost of the benefit to Telus or the value to an appellant as an employee, although the Court might be willing to pro-rate the benefit between Telus and an individual appellant.

[69] Counsel for the appellant – in reply – submitted the current jurisprudence is that if a court finds that something is provided to an employee primarily for the benefit of the employer, then no benefit accrues to the employee and that is the end of the matter. As for the business rationale by Telus with respect to the issue of passes, counsel suggested the policy of assigning them to senior people was reasonable, particularly in the context of the extremely onerous workload during 1998 as demonstrated by the evidence.

[70] The relevant provision of the *Act* is paragraph 6(1)(a) which reads:

**Amounts to be included as income from office or employment -**

There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

a) **value of benefits** – the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, except any benefit ...

The term “benefit” is not defined in the *Act*.

[71] The Supreme Court of Canada in *The Queen v. Savage* (1983), 83 DTC 5409 adopted this passage taken from the judgment of Evans J.A. in *The Queen v. Poynton* [1972] 3. O.R. 727 at p. 738, [72 DTC 6329 at pp. 6335-6] as follows:

I do not believe the language to be restricted to benefits that are related to the office of employment in the sense that they represent a form of remuneration for services rendered. If it is a material acquisition which confers an economic benefit on the taxpayer and does not constitute an exemption, e.g., loan or gift, then it is within the all-embracing definition of s.3.

[72] The position of the appellants is that under the circumstances in the within appeals, the provision of free parking did not represent a material acquisition in the sense that there was an economic benefit conferred because there was no increase to the net worth of the recipient of a parking pass.

[73] In *Attorney General of Canada v. Hoefele et al* 95 DTC 5602, the Federal Court of Appeal considered whether taxpayers who were required by their employer to move from Calgary to Toronto and who received a mortgage subsidy to defray high housing costs in Toronto had received a taxable benefit within the meaning of paragraph 6(1)(a) of the *Act*. At p. 5604 of his reasons, Linden J.A. stated:

According to the Supreme Court of Canada, then, to be taxable as a "benefit", a receipt must confer an economic benefit. In other words, a receipt must increase the recipient's net worth to be taxable. Conversely, a receipt which does not increase net worth is not a benefit and is not taxable. Compensation for an expense is not taxable, therefore, because the recipient's net worth is not increased thereby.

[74] At p. 5605, Linden J.A. continued, as follows:

... If, on the whole of a transaction, an employee's economic position is not improved, that is, if the transaction is a zero-sum situation when viewed in its entirety, a receipt is not a benefit and, therefore, is not taxable under paragraph 6(1)(a). It does not make any difference whether the expense is incurred to cover costs of doing the job, of travel associated with work or of a move to a new

work location, as long as the employer is not paying for the ordinary, every day expenses of the employee.

[75] In the within appeals, the provision of free parking by Telus to the appellants had the obvious effect of eliminating the need for them to pay for the same privilege out of their own pockets. In that sense, and without more, there was a benefit conferred on them that had a fair market value ranging from \$1500.00 to \$2800.00 per year depending on the location of the facility and whether the stall was assigned. The provision of free parking by Telus was not a zero-sum transaction in the sense that term was used in *Hoefele*. Instead, it conferred a measurable economic advantage.

[76] More important is the question whether that advantage accrued primarily to Telus. The position of the appellants is that the economic advantage was enjoyed by the employer and therefore is not a taxable benefit to them. They argue that Telus incurred other expenses when employees worked outside regular business hours and that it had a policy – in 1998 – of paying for taxis fares between an employee’s home and their place of work when beginning or ending work late at night or early in the morning, as admitted at paragraph 3 of the Global Admissions in Exhibit A-1. Further, Telus policy was to pay for taxi fares required for travel during regular business hours where such transportation was required in the course of carrying out their duties. As a result, the appellants contend that if certain employees arrived early or worked late by utilizing their vehicles, then Telus gained the benefit of having them work beyond regular business hours, thereby becoming the primary recipient of the advantage derived from the use of those employee parking passes.

[77] In respect of the general principles of section 6(1), Professor Vern Krishna in his book *Fundamentals of Canadian Income Tax* (9<sup>th</sup> ed.) (Carswell, 1996) at pp. 229-230 stated:

A benefit is an economic advantage or material acquisition, measurable in monetary terms, that one confers on an employee in his or her capacity as an employee. Thus, there are several elements to this analysis:

1. Did the employee receive or enjoy an economic advantage?
2. Is the economic advantage measurable in monetary terms?
3. **Was the economic advantage for the benefit of the employee or for the benefit of his or her employer? and**
4. Did the employer confer the economic advantage on the employee in respect of, in the course of, or by virtue of the employment relationship with the employee?

If we answer all these questions in the affirmative, the economic advantage or material acquisition is a taxable benefit from employment unless the statute specifically exempts it from tax. [emphasis added]

...

The third question to consider is whether the economic advantage was for the benefit of the taxpayer or for the benefit of the employer who conferred it. A payment that is primarily for the convenience of the employer is not taxable to the employee. **Thus, the key is: who is the primary beneficiary of the payment.** For example, where an employer requires an employee to take computer courses so that he or she is better trained for his or her job, the cost of the job training is not a taxable benefit to the employee even though he or she becomes a better qualified and more valuable person. The benefit to the employee is ancillary to the benefits that the employer derives.

Similarly, where an employer sends her employee for second language training, the expenses are primarily for the benefit of the employer even though the employee is better trained and marketable. What if the employer sends one of its senior executives on a fully reimbursed basis to Paris for three years? Would it make a difference if the executive was 45 years of age or 70 years?

**There is no bright-line test, however, to determine what constitutes a benefit to the employee and convenience to the employer, particularly where there are mutual benefits.** The convenience to the employer test does not imply that the employee cannot derive pleasure from the task entrusted to him or her. For example, a hotel manager who is “compelled” to live in a luxury suite in a resort hotel is not taxable on the value of the suite if the manager’s job requires him or her to be on the premises. [emphasis added]

[78] In *R. Peter B. Lowe v. Her Majesty the Queen* 96 DTC 6226, the Federal Court of Appeal dealt with the case of a taxpayer who was an account executive employed by an insurance company. At the request and expense of his employer, he and his wife attended a conference in New Orleans. The Minister included a benefit in the taxpayer’s income by assessing a value equal to the cost of the trip to the employer minus the estimated amount attributable to the business portion of the trip. Stone J.A. – writing for the Court – at p. 6230 of his reasons stated:

... It seems to me in light of existing jurisprudence that no part of the appellant's trip expenses should be regarded as a personal benefit unless that part represents a material acquisition for or something of value to him in an economic sense and that if the part which represents a material acquisition or something of value was a mere incident of what was primarily a business trip it should not be regarded as a taxable benefit within subparagraph 6(1)(a) of the Act. The Tax Court Judge found that the

primary purpose of the appellant's trip to New Orleans was not for personal pleasure but for the purposes of the employer's business and allowed 80% of the appellant's costs as the business portion of the trip. His refusal to allow the whole as business expenses was based on the view that the trip to New Orleans was to an extent to 'reward' him and because he derived some pleasure from the trip. When the time spent in New Orleans by the appellant on the employer's business is considered, it can be readily seen that the appellant had precious little time left over for personal pleasure. Nor is it clear that there was any element of 'reward' for the appellant. It may well be, depending on the circumstances, that a true 'reward' situation could support a conclusion that a trip was somehow earned by an employee so as to make the cost thereof, in whole or in part, taxable in the hands of the employee. The essential question in the present case, it seems to me, is whether on the facts the principal purpose of the trip was business or pleasure. Here it was found to be the former. Any pleasure derived by the appellant must, in my view, be seen as merely incidental to business purposes having regard to the fact that the overwhelming portion of the appellant's time in New Orleans was devoted to business activities.

[79] In *McGoldrick v. Canada* [2003] T.C.J. No. 502, Woods J. considered the appeal of a taxpayer who worked at a casino where employees were allowed one free meal per shift from the cafeteria at the work site. The employer also provided entertainment events and free hams and turkeys. At paragraph 20 of her reasons, Woods J. stated:

The testimony of the Vice President, Human Resources of Casino Rama was that the required use of the Turtle Island Café was for the benefit of the employer. If the personal element is incidental, it should not constitute a taxable benefit. In my view the personal element is not incidental. The fact that Mr. McGoldrick did not like eating at the Turtle Island Café should not be determinative. Also, the amount of the expense saved is not immaterial compared with the amount of the taxable benefit and it should not be ignored.

[80] At paragraph 23 of her reasons, with respect to the entertainment events, Woods J. found they were only occasionally attended by Mr. McGoldrick and did not accept that a benefit has been "received." Woods J. decided the cost of the free hams and turkeys received by the taxpayer from the employer should be included in income pursuant to paragraph 6(1)(a) of the *Act*.

[81] The taxpayer appealed to the Federal Court of Appeal. The judgment of the Court was delivered by Malone J.A. as reported in 2004 FCA 189. At paragraphs 3-5, inclusive, Malone J.A. stated:

[3] Mr. McGoldrick works for Casino Rama at a large casino complex near Orillia, Ontario. Casino Rama provides one free meal per shift to its employees at an employee



cafeteria. Employees are not permitted to bring food onto the casino premises for sanitation reasons, and it is impractical to eat off-site due to the casino's location. The only alternatives to eating at the employee cafeteria are not to eat or to use coin-operated vending machines provided by the employer. Most days Mr. McGoldrick ate at the employee cafeteria even though he did not enjoy the experience.

#### Tax Court Proceedings

[4] Before the Tax Court, Mr. McGoldrick argued that the provision of these meals was not a taxable benefit because they were not provided for employee relations purposes. Rather, they were provided solely because of business considerations, namely sanitation, which gave rise to a rule precluding all employees from bringing their own food onto the casino premises. He urged that the provision of these free meals is not a taxable benefit if any personal enjoyment is merely incidental to the business purpose. In the alternative, he claimed that the meals were not taxable because they were reimbursement for his being denied the right to bring a meal to work. Reimbursement for out-of-pocket expenses is also an established exception to paragraph 6(1)(a) (see *The Queen v. Hoefele*, [95 DTC 5602](#)).

[5] The Tax Court Judge canvassed a number of leading authorities, made a number of factual determinations and concluded that the cost of the meals and the free hams and turkeys were taxable benefits to be included in computing the appellant's income for the taxation years in issue pursuant to paragraph 6(1)(a) (reported as *McGoldrick v. Her Majesty the Queen*, [2003 DTC 1375](#)). The Judge determined that while there was testimony that the meals were provided for a business purpose, the personal benefit to Mr. McGoldrick could not be said to be incidental in this case; the amount of the expense saved being material when compared with the amount of the taxable benefit. The appellant's reimbursement argument was similarly rejected as, on the basis of the evidence presented, the meals were not reimbursement for out-of-pocket expenses so as to fall within the reimbursement exception to paragraph 6(1)(a).

[82] At paragraphs 9 and 10, inclusive, Malone J.A. continued:

[9] As a general rule, any material acquisition in respect of employment which confers an economic benefit on a taxpayer and does not constitute an exemption falls within paragraph 6(1)(a) (see *The Queen v. Savage*, [83 DTC 5409](#) at 5414 (S.C.C.)). In this case, the benefit is the money saved by the taxpayer in preparing a lunch or in making a food purchase from the casino vending machines while at work. Where something is provided to an employee primarily for the benefit of the employer, it will not be a taxable benefit if any personal enjoyment is merely incidental to the business purpose (see *Lowe v. The Queen*, [96 DTC 6226](#) at 6230). The Tax Court Judge found that although the meals were provided for a business purpose, the personal benefit to Mr. McGoldrick could not be said to be incidental. That was a factual finding, and no palpable and overriding error on the basis of the evidence has been established. Indeed, Mr. McGoldrick voluntarily

signed an authorization for the employee meal tax benefit at the commencement of his employment.

[10] In oral argument, the appellant frequently noted that, in his view, the meals were not worth the \$4.50/day ascribed by the employer as the taxable benefit. That amount was based on the cost to the employer of providing the meals and seasonal gifts, including the PST and GST. He also indicated that although assessed a tax benefit on the basis that he received such a meal every day he worked more than five hours, in fact he often declined to go to the cafeteria. As a person living alone, he often did not take the turkeys or hams offered at holidays.

[83] I will review the decisions in various “parking cases.” In *Saskatchewan Telecommunications v. Her Majesty the Queen* 99 DTC 1306, Beaubier J. heard an appeal from an assessment of *Goods and Services Tax* (GST) in the course of which it was necessary to deal with the issue whether any portion of the parking provided to the employees of SaskTel constituted a “benefit amount”, required under paragraph 6(1)(a) of the *Act* to be included in computing such employees income. The Minister had assessed SaskTel for a certain period on the basis it had not withheld - at source from the subject employees - any amounts under the *Act* in respect of the parking privileges provided to them and had not collected and remitted the proper amount of GST in respect thereof. At paragraphs 11-14 of his reasons, Beaubier J. stated:

[11] The Appellant's evidence is that the employees who were provided parking stalls which remain subject to assessment did not have the use of particular stalls. They were expected by the Appellant to travel, from time to time, from their assigned offices in the course of various duties assigned to them by the Appellant in the course of their employment, which they did. On average this travel occurred on more than 30% of their working days. Their vehicles and they had access to that parking 24 hours a day, 7 days a week throughout the year. The subject employees could use the parking facilities after office hours for their personal use in their discretion. Their usage during office hours was for the benefit of the Appellant. The Appellant provided business parking and its employees used their own vehicles located in that parking for the Appellant's business from time to time as required by their duties. As a result, business travel occurred more quickly and efficiently. This benefited the Appellant, not the employees.

[12] However, each subject employee paid the Appellant the rates described and these rates constituted reimbursement for the personal aspect of their occasional use of the parking after office hours. Thus, any personal benefit was paid for in the rates levied on the employees by the Appellant.

[13] In the Court's view this is an evidentiary issue. The Appellant proved its contention respecting the parking. The Respondent did not prove that the employees received any personal benefit from the parking or that the rates it

calculated represented either the correct value or the fair market value of the portion of the parking which constituted personal benefit to the employees. Rather, the Appellant and its employees were at arm's length and they made mutual deals respecting the parking in which each got consideration for what it gave.

[14] Thus, any value which an employee received was for that employee's occasional use of the parking facilities for shopping or entertainment similar to the personal use described by Mr. Unick. The Appellant and its employees agreed on a rate of payment by each employee that is commensurate with the personal parking value that those employees received. For this reason, this portion of the appeal is allowed.

[84] In *Monteith v. Canada* [1997] T.C.J. No. 1282, although the judge did not agree with the methods used by the Minister to assess the value of parking provided to the taxpayer by his employer, the provision of an assigned stall was held to constitute a taxable benefit.

[85] In *Richmond v. Canada* [1998] T.C.J. No. 258, the taxpayer was provided with a reserved parking stall at Metro Hall which he used only about 20 per cent of the year because the rest of the time he walked to work. The argument of the appellant was that a benefit not used is not a benefit received and he should have been assessed a benefit based on his actual usage rather than the value for the entire year. In his reasons, Bell J. referred to the case of *Soper v. M.N.R.* 87 D.T.C. 522 and at paragraph 7 of his reasons commented:

Whether the Appellant used the property is of little consequence. It was available to him and was accordingly a benefit to him. He adduced no evidence to establish that the value of the assigned exclusive parking spot was less than that assessed by the Minister.

[86] The Tax Court in *Todd v. R.* [2001] 3. C.T.C. 2816 held that a taxpayer who worked for a company in Red Deer in the morning and in Calgary during the afternoon did not receive a taxable benefit with respect to free parking because that provision was for business purposes and was of no personal benefit to the taxpayer.

[87] The appellants relied – strongly - on the decision of Teskey J. in *Chow v. Canada* [2000] T.C.J. No. 902 which also included the appeal of Brian Topechka heard on common evidence. Both appellants were employed by Telus and worked at Telus Plaza in Edmonton. Both were assessed by the Minister on the basis they had received a taxable benefit within the meaning of the *Act* because they had been

provided with parking space. With respect to the appellant Chow, these facts are set forth in paragraphs 6 – 14:

[6] Chow was required to report to work at the Telus south -- Telus Plaza, South Tower at 120 - 100 Street, Edmonton, Alberta.

[7] Chow's salary was determined in accordance to pay band level 26 which was generally applicable to employees with similar functions and/or responsibilities.

[8] Telus provided parking to all its employees who wishes parking in pay band level 26 whether they are required to work downtown locations or in other areas of Alberta. In most of the other Telus areas parking is available to its employees on streets without charge.

[9] Telus provided Chow with parking at the Telus Plaza parkade, which was a two floor structure owned by Telus and formed part of the Telus Plaza. Chow did not have a reserved spot for his exclusive use in the parkade but was entitled to the parkade on a first-come first-serve basis. The parkade was open to the general public and sometimes was full and unavailable.

[10] Chow used his parking privileges in the parkade almost exclusively for business use in connection with his employment.

[11] Telus employees in pay band 26 who report to work at Telus Plaza, south tower, are entitled to parking privileges in the parkade but do not receive additional compensation if they elect to forego such parking privileges and some employees do this.

[12] Chow was not economically enriched if the other employees did not use the parking privileges in pay band level 26 as a result of this privilege.

[13] Although Chow used his vehicle for limited business purposes, he did not receive any reimbursement for the use of his vehicle for business purposes within the City of Edmonton. Chow used the vehicle one or two times a month on Telus business. Fifty percent of his work for Telus was required after hours work. He could use public transportation in the morning but after six p.m. public transportation was not an option as there would have been several transfers, together with a two to three kilometre walk at end. Taxis would have been paid for for the late work but Telus elected to provide the parking pass as it was more economical to Telus. The parking pass for Chow gave Telus many extra hours of employment, which undoubtedly Telus received from all of its pay band 26 employees.

[14] It is Telus's practice to reimburse employees working late for taxi fares incurred on such occasions as public transportation would not be available.

[88] The facts pertaining to Topechka were stated in paragraphs 15-18, as follows:

[15] In regards to Brian T-O-P-E-C-H-K-O, or K-A (Brian). Brian was employed through the '94 taxation year as a corporate financial analyst in the treasury division of Telus. Brian was required to report to work at the Telus Plaza, south tower, at the same address as Chow. Brian's salary was determined according to pay band level 24, which is generally applicable to employees with similar functions and/or responsibilities. Employees in pay band 24 do not receive a parking pass.

[16] Due to the nature of his work with Telus, Brian is required to begin the work day at five a.m. each weekday. Telus benefit by having Brian report to work at this time in that it provided Telus with the possibility of investing its cash assets in financial markets during the prime hours of operation in Canada and thus enabling it to better products and returns.

[17] Brian was not able to use the municipal public transportation network in order to report to his place of work at five a.m. each weekday.

[18] Telus provided Brian with a parking privilege at the parkade. Brian did not have a reserved spot for the exclusive use of the parkade but was entitled to park in the parkade on a first-come first-serve basis. Brian used his parking privileges in the parkade exclusively for business use in connection with his employment and did not utilize such privileges for any personal use or purpose and when he was absent from his job his replacement had his parking pass. Brian was two or three times a month required to use his vehicle for business purposes and did not receive any reimbursement for the use of his vehicle for business purposes within the City of Edmonton which was part of the quid pro quo for the parking pass.

[89] At paragraphs 19 and 20 and in part of paragraph 21, Teskey J. commented:

[19] The respondent's position in law is not accurate. Parking is different from travelling to and from the place of employment. The argument that some employees pay for parking and, therefore, these employees that receive a parking space receive a benefit does not carry the day.

[20] Each and every contract of employment must be looked at individually to determine all of the terms thereof and then the court must determine is there an economic benefit to the employee as opposed to the employer?

[21] Free parking is provided to many groups of employees from one end of this country to another. These groups are too numerous to even name a few. The Minister is wrong to start with the premise that if an employee receives free parking from an employer there is a taxable benefit pursuant to paragraph 6(1)(a)....

[90] After referring to the quotation in *The Fundamentals of Canadian Income Tax, supra*, by Professor Krishna and reviewing relevant jurisprudence with respect to what constituted a taxable receipt – including the decisions in *Savage, Hoefele, and Lowe, supra* - and after finding the economic benefit flowing from the provision of parking spaces to the appellants was gained by Telus, as their employer, Teskey continued - at paragraphs 27-30, inclusive, as follows:

[27] In the Chow appeal, the parking space allowed Chow to use his own motor vehicle once or two a month on Telus business and to receive month in and month out many times the value of the parking privilege in extra hours of overtime work that was to Telus's economic advantage.

[28] The economic benefit arose to Telus by having this mid level executive work these late hours and it was cheaper for Telus to provide a parking space than to pay the taxi fares, so the benefit was to Telus, the employer.

[29] In the Brian appeal, the parking space allows Telus to obtain better performance from its employee by coming to work at five a.m. daily a week, making it possible for Brian to use his own vehicle two or three times as well as for business without expenses to Telus.

[30] It was Telus's economic advantage to provide the parking privilege and at the most economically way, therefore, both these appeals are allowed with costs.

[91] It is important for the purposes of analysis to summarize the facts in the *Chow* case – first, pertaining to Chow - as follows:

1. Chow did not have a reserved spot for his exclusive use but was entitled to park in the facility on a first-come, first-served basis, sometimes referred to as “scramble parking”.
2. The parkade was open to the public and sometimes was full.
3. Chow used his parking privileges almost exclusively for Telus business.
4. Chow was not reimbursed by Telus for using his vehicle for business once or twice a month within the City of Edmonton.
5. He was required to work 50% of the time after regular hours.
6. Chow could have used public transit in the morning but in order to return home after 6 p.m. would have needed to take several transfers leaving him with a two to three kilometre walk at the end.
7. Telus paid taxi fares for employees working late on occasions when public transportation would not be available.
8. Telus elected to provide a parking pass as it was more economical to Telus and it gave the company many extra hours of employment which it undoubtedly received from all other employees in the same pay band - 26 – who received parking privileges.

[92] With respect to the appellant – Topechka – in the *Chow* decision, the relevant facts were:

1. Even though Topechka was in pay band 24, a rank not entitling him to a parking pass, he received one for the lot at Telus Plaza and could park on a first-come, first served basis.
2. He had to start work – as a Corporate Financial Analyst - at 5 a.m. each weekday and could not use municipal public transportation.
3. Topechka used his parking privilege exclusively for business purposes and when absent his replacement used the pass.
4. He used his vehicle for business purposes within the City of Edmonton two or three times a month and did not receive any reimbursement.
5. The lack of reimbursement for business use of his vehicle was part of the quid pro quo for the free parking pass.
6. Topechka's early arrival at work facilitated participation during prime hours in the financial markets in Canada which provided Telus with the opportunity to invest cash assets, thereby enabling it to earn better returns on capital.

[93] There are several major differences in the facts in the within appeals as follows:

1. Even though most appellants did not have an assigned stall in the particular facility, each of them could always park his or her vehicle.
2. Telus reimbursed them on a per-kilometre basis for use of their vehicles for business purposes.
3. Telus reimbursed the appellants for parking expenses - at other locations - incurred in the course of their employment.
4. No other Telus employee could use their pass for Telus Plaza or 44 Capital without notification to the Real Estate Department and a pass was specific to a particular facility.
5. In 1998, Telus paid for taxi fares incurred during regular business hours and outside regular hours, including transportation between home and work for those periods earlier than 6:45 a.m. or later than 11:00 p.m..
6. There was no evidence of any analysis carried out by Telus to determine whether it was more cost effective to provide parking to its employees as opposed to reimbursing them for taxi fares.

7. There was no evidence adduced of any comparative examination by Telus of the cost of having employees use their own vehicles when working outside of regular business hours and reimbursing them for taxi fares.
8. Even though in relation to employees in pay bands 4 and 5 there was an implied condition that overtime was expected when required, payment for additional hours was generally built into the employee's overall compensation and the bonuses were paid pursuant to the variable pay policy.
9. Parking passes could be used for non-business purposes every day of the year.
10. None of the appellants asserted they had worked overtime because they had received a free parking pass.
11. The majority of appellants had a work schedule – in 1998 - that permitted them to take public transportation to and from work, even though that was not – generally - as convenient during late evening hours, weekends or holidays compared to using their personal vehicle.
12. None of the appellants was required to work 50% of the time outside regular business hours.
13. The Real Estate Department issued a pass – automatically – to those employees in pay band 5 and above and to those in lower pay bands if covered by a grandfather clause as a result of a merger or acquisition.

[94] As Bowman J. (as he then was) commented in *Pezzelato v. The Queen*, 96 D.T.C. 1285, at p. 1288:

It is easy to point to extremes at either end of the spectrum, but the cases that come with increasing frequency before the courts are not at either end. They fall somewhere in between. The courts must decide on which side of the line each case falls.

[95] Recently, in *Toutov v. R.* 2006 D.T.C. 2928, Chief Justice Bowman stated:

[2] The general rule of course is that the cost of traveling from one's home to one's place of work is not a deductible expense. This has been settled law for many years.

[96] I am ready to decide these cases, beginning with the appeals of Dan Delaloye and Bruce Brandell as each occupies an unusual point along the spectrum.

Dan Delaloye:

[97] Delaloye was transferred to Calgary – in 1997 – from Edmonton, to supervise a new division of Telus and as a Vice-President in pay band 6, was responsible for several other offices in Calgary, Lethbridge, Edmonton and Grande Prairie. He testified that part of his duties was to increase the visibility of Telus in Calgary since



AGT throughout its history had been based in Edmonton. Telus provided him with a leased vehicle and issued a free parking pass for the lot in Telus Tower. He assumed the Honda Acura had been provided to him because of the position he occupied as Vice-President and the nature of his duties which required him to use the vehicle both in Calgary and for travel to Edmonton and other places in Alberta. When he travelled by air, he drove the car to the airport. Delaloye testified that he considered it “absolutely essential” that he had a parking pass which provided him the opportunity to use his car during the day to visit Telus clients and other Telus pay phone offices in Calgary. He stated it was extremely difficult to use public transportation to carry out those duties particularly when participating in between 20 and 40 community activities and functions as a representative of Telus, some of which were held at 7:00 a.m. or during the evening. Some days, he made 4 or 5 trips away from his office. He could not recall having used the parking space for personal reasons although he was entitled to do so. Delaloye kept a log and the business portion of vehicle use – in 1998 - was 70% during the course of 137 days and he paid income tax on the personal benefit attributable to the remaining 30%. Delaloye conceded there had been no analysis undertaken either by him or Telus to compare the cost of taxi fares with the Minister’s assessment of fair market value - \$1,800.00 plus \$126.00 GST for a total of \$1,926.00 per year - of the parking space assigned to him but considered it reasonable to assume that his lost time – at \$68.97 per hour – waiting for a taxi would amount to several thousand dollars per year. Delaloye enjoyed the convenience of driving to and from work at his convenience, particularly during weekends. He received a bonus for his performance in 1998 and did not consider the value of the parking pass was factored into his basic compensation. He was away from Calgary on business about 70 days in 1998 and it is reasonable to assume his assigned parking stall was empty during those times.

[98] The key question is who is the primary beneficiary of the payment for the parking stall. The definition of “primary” according to *The Canadian Oxford Paperback Dictionary* – Oxford University Press – 2000 – is:

- 1a. of the first importance; chief (*our primary concern*)
- b. fundamental, basic.
3. of the first rank in a series;

[99] It is important not to get sidetracked by becoming ensnared in a numbers game. That sort of exercise is often necessary when dealing with a GST case where it is important to decide whether a “passenger vehicle” was acquired “primarily” for a certain specified use within the ambit of the relevant provisions of the *Excise Tax Act* or whether it was used “all or substantially all” of the time for a particular purpose. In

the case of *Ruhl (W.) v. Canada* [1998] G.S.T.C. 4, Bowman J.T.C.C. (as he then was) held that a truck which was used to transport passengers or equipment over 80% of the time amounted to substantially all of the time. There was also a finding that the truck was designed primarily to carry goods and equipment and the carriage of passengers was a secondary purpose. Counsel for the respondent had submitted that “primarily” meant over 50% as opposed to “substantially all” which Revenue Canada – as it then was – decided was 90% of the time.

[100] In another GST case - *Myshak (D.) v. Canada* [1997] G.S.T.C. 59, involving the use of a particular vehicle, Judge Sobier – at paragraph 19 stated:

While the Vehicle may have been used primarily for commercial purposes and in the transportation of goods, et cetera, it was not used all or substantially all of the time for those purposes. Its use must be more than passing. By using the word “all”, we are invited to give a meaning to the word “use” which means all of the time or only for that purpose. The insertion of the word “substantially” in this sub-paragraph is to make the word “all” less intrusive and less encompassing but still of greater weight than merely primarily.

[101] The reason I mention these cases is that in the context of Delaloye’s appeal, the extent of vehicle use by Delaloye, measured either in the number of days – 137 - or the proportion – 70% – for business purposes – which did not include driving between home and work – is not determinative as in those scenarios when it must conform to requirements imposed by specific language in a statutory provision. Instead, it requires an examination of the totality of the evidence with a view to assessing on a reasonable, practical, basis whether under the particular circumstances, Delaloye’s enjoyment of the parking privileges afforded by the free pass supplied by Telus was ancillary to the benefit derived by his employer. I consider it significant that Telus provided him with a leased vehicle which was used 70% of the time for business purposes in 1998. To also supply a parking space for that vehicle is reasonable, particularly in view of the nature of the duties performed by Delaloye, not only in the course of his ordinary work - which required him to travel by car in Alberta – but also to visit important clients such as Fairmont Hotels in Jasper, Banff, Golden and to facilitate his role as the new point man in Calgary assigned the task of promoting and enhancing the corporate image of Telus.

[102] I have taken into account the nature and extent of the use of the vehicle and the parking space and the purpose for which it was provided. I have considered the special circumstances of Delaloye’s position in 1998 and his employer’s requirement that he travel in the course of his employment not only in pursuit of Telus business but also as a corporate ambassador. There is no basis on which to find that the type of

business travel recorded by Delaloye in the log would have been more efficient had he used other modes of transportation. As an executive charged with certain responsibilities, he made business decisions on a regular basis, including when to travel by air. In the Reply to Delaloye's Notice of Appeal, the Minister assumed in subparagraphs 8(x) and 8(y) that the parking pass primarily benefited him and not Telus and that it was a personal benefit conferred to facilitate travel to and from the workplace. The evidence leads me to conclude otherwise. I find Telus was the primary beneficiary of the benefit afforded by the parking pass. In so holding, I have drawn a reasonable inference that notwithstanding the lack of formal documentation with respect to Delaloye's position and the lack of a written employment contract, that his conduct throughout 1998 was consistent with an understanding that he use the Telus-supplied Honda for business purposes and that the free parking space was provided as an accessory to facilitate its efficient use. The enjoyment or personal benefit flowing to Delaloye from the ability to drive to work and to park in a heated, underground, assigned stall was ancillary to the one accruing to Telus bearing in mind the extent of his travel both in and out of Calgary - and to and from the airport - and the probable cost of alternative transportation to achieve those business purposes. I appreciate there is no direct evidence on that point but Telus policy was to reimburse employees at a rate of about 35 cents per kilometre in 1998 and to pay for taxi fares. It is reasonable to assume that Delaloye's travel to various locations in Calgary and to the airport would have represented a considerable outlay over the course of a year.

[103] The appeal of Dan Delaloye is allowed and the assessment is referred back to the Minister for reconsideration and reassessment on the basis the sum of \$1,926.00 included into income for the 1998 taxation year as a taxable benefit be deleted.

Bruce Brandell:

[104] Brandell never drove to work in 1998 and did not use the free parking pass supplied by Telus. He testified it landed on his desk one day and assumed he had received it because he was employed in a pay band 4 position. He did not notify anyone in Telus management that he was not using the pass. Earlier, I referred to the *Richmond* case in which Bell J. found the parking space provided was a personal benefit and upheld the Minister's assessment of value for the entire year even though the taxpayer had used it only 20% of the time. The situation with respect to Brandell is different. He did not intend to receive the pass and never used it. It is reasonable to assume some other employee of Telus parked in that space since it was not an assigned stall to be used exclusively by the pass holder, as in *Richmond*. Or, it may have been sold as a paid-parking spot by the parking management company's cashier - to a member of the general public if that space was not occupied on certain days. In

*Soper*, referred to in *Richmond, supra*, the taxpayer's employer maintained a house in Florida for her use whenever she wished, to the exclusion of everyone else. The fact she chose to use it only 3 weeks a year did not affect the amount of the fair rental value – for the whole year - assessed by the Minister as a taxable benefit. In the within appeal, it strikes me that assessing Brandell with a taxable benefit is a throwback to those bad old days of marketing when companies – usually selling cookbooks or a set of encyclopedia – delivered their wares to unsuspecting householders with the written admonition – usually inside the carton - that if they did not want to purchase that product for the stated price they had to return it within the specified period, usually 7 to 10 days. That technique came to be banned in most jurisdictions even remotely concerned with consumers' protection. When a national cable television provider attempted to employ the same basic tactic a few years ago - albeit a bit more sophisticated in keeping with our new technical age - by attempting to foist additional channels on subscribers - using what came to be known as “negative option billing” - there was a massive public outcry. Counsel for the respondent suggested the parking space was provided to Brandell in view of the important work he was performing for Telus and represented a status symbol. If so, it had no monetary value to him and the evidence does not lead me to believe it boosted his ego nor enhanced his prestige in the neighbourhood as he walked to work each day. Brandell did not use a vehicle in the course of his employment and did not need the parking space. Taking into account these unusual circumstances, even if Brandell did not elect to take whatever steps were necessary within the Telus bureaucracy to rid himself of the pass and his acquiescence in keeping it could be regarded – somehow - as leaving open the potential for some use at some point during the year, that remote possibility had no practical, measurable monetary value. Therefore, no taxable benefit accrued to him in respect of that pass even though it was provided by Telus in the course of his employment.

[105] The appeal of Bruce Brandell is allowed. The assessment is referred back to the Minister for reconsideration and reassessment on the basis the sum of \$1,926.00 included in his income as a taxable benefit in the 1998 taxation year be deleted.

Myron S. Borys:

[106] Borys held the title of Director of Consumer Internet Services - in pay band 5 – and worked from 8:00 a.m. to between 5:30 p.m. and 6:00 p.m., a schedule he considered normal for his managerial position. He testified he used his vehicle for Telus business “a couple of times a week” in 1998. Although he often took the bus to work, if he had to work later than usual, he drove his vehicle because it was not convenient to take a bus to off-site meetings during the day and he believed the

frequency of bus service after 6 p.m. required longer waits. Even without an assigned stall he always found a space. He used the pass for personal reasons once or twice a year. In his view, the pass permitted him to work at the office during weekends and overall enhanced his ability to carry out his duties. Borys received his parking pass from Telus and considered it part of his total compensation since he had been entitled to free parking privileges – since 1994 - as a manager with Ed Tel. Even though he used his vehicle 100 times a year for Telus business and was aware of Telus policy to pay employees for using their vehicles, he did not submit any expense claims in respect of that use. His position with Telus did not require that he own a vehicle or hold a valid driver's licence.

[107] The evidence established that Borys worked 1-3 hours of overtime nearly per day, and 4 to 6 hours once a month on the weekend and also worked at home once or twice a month. In 1998, he lived at 8703-42 Ave. NW, which according to the evidence of Douglas Connor, ETS Scheduler, received adequate service from downtown to his residence and he could have left downtown at 9:08 p.m. and arrived at the stop near home 43 minutes later, in about the same time as a trip by car at that time of night. Telus policy was to reimburse employees for taxi fares incurred for business purposes and Borys used taxis to travel to off-site meetings during the day but usually took his own car to and from the airport. He claimed approximately \$1,400 on his expense sheets for taxi fares in 1998.

[108] People are free to live where they want relative to their work, the neighbourhood pub or their in-laws. In the Borys situation, he chose to take his car to work for the purpose of attending off-site meetings or when he planned on working later than normal. That choice was his, based on his appreciation of the convenience and comfort afforded by the ability to park in the lot. Borys did not attempt to quantify any possible increase in his productivity as a result of having the parking pass.

[109] In my view, the chief benefit of the parking pass accrued to Borys. There is no reasonable basis upon which I can find that the primary beneficiary of the payment for the parking space was the employer, particularly in light of the fact the pass was provided to Borys based on his position in pay band 5 and in recognition of an entitlement to it when he worked as a manager for Ed Tel.

[110] The assessment of the Minister is correct. The appeal is dismissed.

Douglas Alloway

[111] In 1998, Alloway held the position of Director, Human Resources with responsibility for as many as 1,600 employees. He was in pay band 4 and his position did not require that he have a vehicle to carry out his duties as a condition of employment. When using his vehicle for business purposes in the Greater Edmonton area once or twice a week, he had not submitted any expense claims to Telus even though he drove about 1,000 kilometres in 1998. He used the pass for personal reasons two or three times that year. Before receiving his pass from Ed Tel in 1994, he rode the bus to work. The bus service to Alloway's neighbourhood ran at peak frequency until 6:00 p.m. and even if he worked late and caught the bus downtown at 9:01 p.m., he would have arrived at his home stop by 9:57 p.m., a trip probably 35 minutes longer than by car. Alloway preferred to use his car to travel to work as a bus ride required a transfer at Southgate station. In his opinion, he considered it was reasonable that he work extra hours to justify the privilege of the parking pass which he had received – without asking – from Telus in 1996. He estimated the expense incurred by taking 8 to 10 taxi trips per month for business purposes would have exceeded the payment - by Telus - for his parking space which the Minister assessed as having a fair market value of \$160.50 per month, including GST.

[112] There is insufficient evidence before me to conclude that Telus was the primary beneficiary of the payment for the parking pass which Alloway used to find – always – a space in 1998. It may be that some business trips could have been taken by riding free on the LRT during the late morning and early afternoon. Alloway chose not to bill Telus for using his car to drive 1,000 kilometres on business that year which - at 35 cents per kilometre - would have amounted to \$350.00. Certainly, the taxi trips from Edmonton to St. Albert or Sherwood Park would have been relatively expensive compared to fares in downtown Edmonton since the total distance was 50 and 70 kilometres respectively but there was no evidence with respect to the frequency of these trips and the extent of that travel as a proportion of total Alloway's business use - 1,000 kilometres – of his vehicle. It is apparent Alloway worked hard in carrying out the onerous duties associated with his executive position but the better view of the evidence is that the use of the parking space was inextricably linked to personal choices made by him throughout the year rather than pursuant to any direction or requirement - either express or implied - on the part of his employer. Alloway admitted he considered the parking pass had enabled him to work overtime and to receive better raises and achieve promotion within Telus. As a result of Alloway's decisions to use his vehicle for personal convenience and to facilitate working overtime or for direct business purposes and not billing for that usage, Telus received an ancillary benefit which even though not quantifiable on the evidence was far less than the lion's share of the total benefit flowing from the provision of the pass. That main, primary benefit was received by Alloway and for that reason it is taxable.

[113] The assessment of the Minister is correct. The appeal is dismissed.

Gary Cerantola:

[114] In 1998, Cerantola was a Director, Operations, International Carrier Services, a position in pay band 5 and was provided with a parking pass which he used for the facility in Telus Tower, Calgary. He drove his vehicle to Red Deer and Edmonton and estimated total business use was between 2 and 10 times per week, with only about 60% of those trips having been planned. Telus reimbursed him for using his vehicle. Cerantola testified the pass enabled him to meet certain objectives because he could arrive at work early, leave late and it facilitated his ability to work 4 weekends a month in 1998, an extremely busy year when his typical work week ranged between 65 and 75 hours. He used the pass once for personal reasons. Cerantola conceded it was more convenient to use his vehicle as opposed to taking public transit. In the course of his employment, he rented vehicles and hired taxis, depending on the situation, and Telus reimbursed him for these expenses and for parking at other facilities. He could find a space to park whenever he wanted and used the pass an average of 5 times a week when not absent from Calgary on business about 60 days in 1998. It was not a condition of his employment that he have a vehicle. Cerantola admitted that without the pass he may not have driven to work and may have relied on other means of transportation.

[115] According to the affidavit of Doug Morgan – Exhibit R-14 – there was adequate bus service from Cerantola’s residential area in Calgary to the LRT which ran downtown from Anderson station. Prior to moving to Calgary, Cerantola had taken public transit to work. In 1998, he chose not to do so, mainly because of the convenience afforded by the free parking pass. His 8 trips to Red Deer by vehicle and to other centres in Alberta were probably planned whereas some of the local business trips may have arisen suddenly in the course of a workday. The evidence does not support the proposition that he was required by his employer to use his vehicle for those purposes, particularly when he could have taken a taxi and claimed reimbursement. The weight of the evidence with respect to this appellant tilts the balance heavily in favour of a finding that the parking pass was primarily for his benefit rather than for his employer. As a consequence of his position as Director, he was given a free parking pass and used it to park his vehicle in a comfortable, convenient facility when commuting to and from work. Not a surprising choice on his part, but one that was not directed by Telus nor can it be inferred from the evidence that his position – without more – required him to have his vehicle parked in Telus Tower in order that he could carry out his duties throughout the year.

[116] The assessment of the Minister is correct. The appeal is dismissed.

Henry Bruns:

[117] In 1998, Bruns held the title of Director in two different divisions – both in pay band 5 - at Telus and had a parking pass for Telus Tower in Calgary. He received the pass following a promotion in 1995. Bruns used his vehicle to drive to meetings and to and from the airport. He had not maintained any record of hours worked beyond the normal work week of 37.5 hours but worked extra hours some days and during weekends, as required. He regarded the parking pass as an effective tool that enabled him to work flexible hours and eliminated the need to find other means of transportation. From his residence, he could have walked to work in about 30 minutes or ridden a bicycle – during those rare months in Calgary without snow – or taken the bus, as there is no evidence to suggest service was inadequate at any time during his working hours in 1998. The amount of vehicle use for business purposes was not significant that year and even though Telus would have reimbursed him, he elected not to submit a claim because of the small amount involved compared to the mandatory paperwork. He used taxis to travel to and from airports but drove his car – on occasion – to Edmonton if he decided it was more effective for purposes of a specific trip. Most of his Calgary meetings were held in his office building. He rarely used the pass for personal reasons and was able – always – to find a space to park. In 1998, his business travel outside Calgary – mainly by air - averaged one and one-half days per week.

[118] The evidence does not permit me to find that Bruns required a vehicle in the course of his employment nor that he needed a parking space in his office building to discharge his responsibilities to Telus in 1998. Bruns chose to take his car to work even though it was not necessary because his duties were carried out during times when public transit or other means – including walking and riding bicycle – were not only readily available but also reasonably efficient, requiring maximum travel of about 30 minutes.

[119] I fail to see how Telus was the primary beneficiary of the economic advantage provided by the parking pass. There is nothing before me that would permit me to infer the Telus bottom line was enhanced at any point in 1998 because Bruns parked his car in the Telus lot or that the payment for the parking space was primarily for the convenience of Telus. Instead, the chief advantage or benefit accrued to Bruns who parked for free in a space he would have had to pay for, like other Telus employees in lower pay bands or members of the public.



[120] The assessment of the Minister is correct. The appeal is dismissed.

John Harrington:

[121] In 1998, Harrington worked as a Director for Telus - in pay band 5 - and was provided with a free parking pass to the lot in Telus Plaza. He testified that 1998 was extremely busy and estimated he worked between 45 and 50 hours per week in order to perform his duties. In his opinion, the parking pass allowed him to work late. He was reimbursed for using his vehicle for travel to and from the airport. Usually, he arrived at work between 7:00 and 7:30 a.m. and since he lived in southeast Edmonton, decided it was more convenient to drive. He used the free LRT downtown service for business purposes and travelled by air for meetings outside the city. Harrington conceded there was no requirement that he drive a vehicle for business and had not negotiated – with Telus – to obtain free parking as any part of his total compensation. Harrington had been employed with AGT since 1976 and later - when the Telus brand was used by that entity - was given a parking pass when promoted to a position in senior management in 1986. He did not keep any records of overtime worked in 1998. Before receiving his free parking pass, he drove to work and parked in public lots at a cost of approximately \$50.00 per month.

[122] The evidence established there was a bus stop two blocks from Harrington's residence in 1998. His neighbourhood was serviced by Route 60 which went downtown 7 times in the morning and returned 5 times in the afternoon. Even if he worked late, he could have taken the 9:08 p.m. bus from downtown to Millgate station, and transferred to another one which would have dropped him near home at 9:40 p.m. unless the transfer bus did not wait for the connection to be made. In that case, he would have been forced to wait for the next bus to his residential area. Connor – the ETS scheduler – estimated that same trip would have taken about 25 minutes by car.

[123] There was no requirement – by Telus – that Harrington drive his car to work. There is no evidence that he worked past the service hours of ETS and could have travelled to and from work by public transit. However, he chose to use his vehicle as a matter of convenience. The benefit of the parking pass was something enjoyed by him and did not flow to his employer. One must ask: would Telus have any legitimate business interest in how he commuted to work; what difference would it have made to its business operation; what economic advantage was gained by continuing to provide Harrington with the free pass he had held since 1986 when employed by AGT, a

predecessor corporate entity. The answers to the above questions are: no, none and none.

[124] The assessment of the Minister is correct. The appeal is dismissed.

Donald Barnes:

[125] Barnes was employed as a Sales Manager – in pay band 4 – by TAS, a wholly-owned Telus subsidiary. He played a major role in publishing the Yellow Pages directory for Edmonton and worked from the 44 Capital Building. He had a parking pass which entitled him to an assigned stall. His work required him to travel from one end of the city to the other and he communicated with his office by cellular telephone. In his opinion, the nature of his work made it impractical to use taxis for business purposes. He did not submit expense claims to Telus for using his vehicle and did not record overtime worked. During extremely busy periods when deadlines were approaching, he worked evenings and on weekends and holidays. He estimated he had to work between 1 and 4 hours overtime for a stretch of about 50 days in 1998 to prepare the directory for publication. The critical month was October. Sales representatives working on the same project took taxis and were reimbursed by Telus. Barnes asserted that – as Sales Manager – he could not predict when situations might arise that required him to attend at a particular location in the city. The LRT was not an efficient means of travel for his purposes because 65% of all Yellow Pages advertisers were located in southeast Edmonton.

[126] There was no formal requirement that he use a vehicle in the course of his employment. Part of his duties at TAS was to write job postings so he was familiar with that prerequisite for certain positions. Barnes had held the parking pass since 1988 when it was provided to him by Ed Tel where he had worked in a position later regarded as one in a Telus pay band 3. The evidence is that Barnes had frequent – every 15 minutes - bus service to his area during peak times with adequate 30-minute service in the evening which would have permitted Barnes to leave a downtown stop – one block from Telus Plaza – at 9:24 p.m., arriving at a stop near his home only 14 minutes later.

[127] In terms of placement on the continuum, Barnes is in a different position than most other appellants. There is no doubt there were busy periods between September and the early part of November during which it was an advantage to Telus that he have ready access to his vehicle to facilitate travel throughout Edmonton in his role as Sales Manager supervising up to 10 sales representatives, each of whom was required to call on between 400 and 450 customers. The problem is there is no evidence upon

which I can determine the extent of that advantage to Telus compared with the cost of taxi fares or paying for Barnes to park somewhere for that two-month period. For the remainder of the year, it was convenient for Barnes to drive to work even though he lived only 30 blocks from work. However, the work had to be done whether on holidays or during weekends to meet publishing deadlines. The choice to travel to work – by car – was made by Barnes and not directed by Telus. One would expect some documentation flowing from Telus management to its Sales Department with respect to the economic practicality of using their own vehicles during certain intense periods of activity rather than relying on other means of transportation. Instead, when I look at the year as a whole, and taking into account the nature of the work carried out by Barnes, it is apparent the primary economic benefit in respect of the parking pass was enjoyed by him rather than his employer even though the busy two-month period was critical to the achievement of objectives by the Sales Department. I have no evidence of comparative costs between taxi use and the amount needed to reimburse Barnes for using his own vehicle - if he had submitted a claim - and the fair market value - \$1,926.00 including GST - of his assigned parking space in 1998. In his admissions of fact, Barnes acknowledged that without the pass he may not have driven to work and would have taken the bus or participated in a carpool. There is no doubt there was a significant business component to the use of the assigned parking stall by Barnes in 1998. Unfortunately, it did not constitute the majority of the economic advantage attributable thereto even though it was more convenient for Barnes to travel back and forth to work overtime during that intense 50-day period and to make sales calls and undertake training of sales representatives during other less-hectic periods during that year. Had Telus undertaken some analysis of the costs involved and made a business decision based on it – rather than merely renewing a parking pass based on his former entitlement as an Ed Tel employee – it may have been possible to find the primary benefit accrued to Telus. Even omitting the requirement to own or operate a vehicle as part of the job description of Sales Manager would not have been particularly damaging to Barnes's appeal if the evidence otherwise permitted me to draw the conclusion that the subsequent, actual use of his vehicle was a reasonable condition of that employment - even though not expressed in formal documentation - and that the parking space was required.

[128] The assessment of the Minister is correct. The appeal is dismissed.

Desmond Adler:

[129] Adler worked as a Director in pay band 5 and received a parking pass when he was promoted to that position in 1997. He lived in Sherwood Park, a community about 25 kilometres from his office in Telus Plaza. About 50% of the time – in 1998 –

he and his wife rode to work together and she dropped him off at his building. Adler conceded that without the free pass he would have had to pay for parking on those days when he drove to work. He was under no obligation to use his vehicle in the course of his employment but the pass made it more convenient to drive to work and he was able to find a space each time. In 1998, he never used his vehicle for any Telus business purpose. He was reimbursed for taxi fares including those incurred travelling to and from the airport and his home and was aware of Telus policy to pay 35 cents per kilometre to employees for using a private vehicle for business. Although he did not work on holidays, he generally worked until 5:30 or 6:00 p.m. on weekdays and once or twice a month either on Saturday or Sunday. He contributed overtime in order to complete tasks and not as a result of Telus having provided him with the parking pass.

[130] The affidavit of Richard Grajkowski – Exhibit R-13 – with attached exhibits of schedules therein - demonstrates the frequency of bus service from Sherwood Park Transit Centre and the City of Edmonton during the week. The trip would have taken Adler 25 minutes from that Centre to a stop at 103 St. and 103 Ave., only a few blocks from Telus Plaza. After 6:00 p.m., the bus left that stop every hour – on the hour – until 11:00 p.m.. There was no evidence adduced concerning the frequency of bus service during the weekend but it is safe to assume it operated on a reduced schedule.

[131] It is apparent the parking pass was utilized by Adler as a matter of convenience whenever he decided to drive to work. The pass did not have any identifiable business component to it and its use did not provide any economic advantage to Telus. It did not receive any primary benefit nor any practical ancillary benefit. The free pass was provided to Adler upon his promotion to Director without any consideration of its use in connection with his employment duties. As such, it was “perk”, a symbol, and a demonstration that rank has its privileges in the corporate structure; it provided Adler with an economic benefit.

[132] The assessment of the Minister is correct. The appeal is dismissed.

Joanne Beaton:

[133] Beaton received her parking pass - in 1997 - when she was promoted to Director, Information and Process Solutions, a position in pay band 5. She travelled to major centres in Alberta 3 times per week – on average - and drove to some of them. If travelling by air, she took her car to the airport. Beaton testified that 1998 was an extremely busy year as a result of changes due not only to expansion within the Telus

organization but also to a cultural shift within the workplace to permit it to compete in a highly-competitive business environment. Beaton worked several 15-hour days and after 7:00 p.m. 3 days a week and went to the office at least 3 Saturdays each month. In her opinion, the pass afforded secure accessibility to her office from a heated, lighted, underground parking facility and enabled her to perform her job more efficiently, particularly outside regular office hours. Even though she was not assigned a stall, she found – always – a space. Before receiving the parking pass, she rode to work with her husband in the family vehicle or used public transit. She used her vehicle for business within Edmonton and also used taxis 22 times in 1998, according to her expense sheet. Telus paid her for vehicle use and parking fees incurred in other locations while on business. Beaton acknowledged in her admissions of fact that Telus provided her with the parking pass as part of her benefits as Director and that use of her vehicle was not a condition of her employment. Prior to receiving the free pass, she paid \$140.00 per month out of her own pocket to park at Canada Place.

[134] The later evening transit service to Beaton's residence was not very convenient, compared to the 15-minute equivalent by car. However, she could have taken a bus earlier than the 8:58 p.m. on Route 1 which required her to choose between walking home from a stop on Stony Plain Road and waiting 54 minutes for the next bus to take her on a 5-minute ride to the stop nearest her residence.

[135] There is no doubt Beaton worked long hours in her role as Director. That sort of commitment came with the territory. She made the decision to drive to work on those occasions when she did not need to use her vehicle for out-of-town business travel. Unfortunately, the diary used by Beaton to record that usage is no longer available and she did not offer an estimate in the course of her testimony. It may be the provision of the parking space was an economic advantage to Telus in the context of the extent of travel by car required in the course of her employment both in and out of the city. However, there is no evidence before me to support that theory and her expense claims demonstrate that she used taxis on numerous occasions for various business purposes. Beaton enjoyed the safety, convenience and ready accessibility to her office building afforded by the parking pass. She used it to her advantage and it enabled her to receive – free – a service for which she was required to pay prior to her promotion to Director. The evidence does not permit me to conclude that any factor other than the achievement of that rank motivated Telus to issue the pass. Similarly, it does not allow me to find Telus was the primary beneficiary of the payment associated with the provision of that parking space. Instead, the chief economic advantage was enjoyed by Beaton and constituted a taxable benefit.

[136] The assessment of the Minister is correct. The appeal is dismissed.

Mary-Patricia Barry:

[137] In 1998, Barry was a Director in pay band 5 working from an office in Telus Plaza. In her Human Resources unit, she was responsible for training Telus employees in classroom settings. She was not required to use her vehicle in the course of her employment but found it convenient to drive to locations both in and out of the city for business purposes - between 6 and 8 times a month - particularly when transporting materials for training sessions. When she used her vehicle for business, she was reimbursed at the applicable per-kilometre rate. She received her free parking pass when promoted to Director in 1996 and assumed it had been provided for the purpose of enabling her to work as many as 4 extra hours per week and on a Sunday, as required. Barry conceded that without the free pass she would have preferred to drive to work rather than use public transit even though there was a stop only one block from her house. She conceded there were no free parking facilities in downtown Edmonton that she could have used in 1998.

[138] Barry did not work many hours overtime and had ready access to adequate bus service from downtown to her residence. As a matter of choice, she decided to drive her car to work. There is no evidence upon which to conclude it was advantageous to Telus – from an economic standpoint – to provide her with parking at a fair market value of \$1,926.00 per year - according to the Minister – rather than paying for taxi fares when travelling for business purposes in the city. There was no evidence regarding the extent of out-of-town travel in 1998. There is no evidence of any criteria used by Telus prior to issuing the free pass to Barry but it is reasonable to conclude that her elevation to rank of Director was the trigger which permitted her to enjoy this economic advantage. Any benefit accruing to Telus was incidental and the connection between Barry's free parking privileges and the duties performed by her in the course of employment was – for the most part – nebulous.

[139] The assessment of the Minister is correct. The appeal is dismissed.

Randy Bayrack:

[140] Bayrack was a Project Manager in pay band 4 and had a parking pass for the facility at 107 St. and 100 Ave. He had been an employee of Ed Tel – since 1979 – which became part of AGT, then Telus. Bayrack worked for TAS, a wholly-owned Telus subsidiary. He had a written agreement with TAS which included a provision that he continue to enjoy the privilege of free parking. He used his vehicle for business once a week – on average – to travel to Red Deer and was reimbursed on a

per kilometre basis. It was not a job requirement that he own or operate a vehicle but considered it had increased his efficiency by enabling him to drive to work and park in the facility. Often, he worked earlier than 8:00 a.m. and later than 6:00 p.m. Before receiving the pass, he had driven to work. Although his space was not assigned, he was able to park in a space every time he drove to work which he considered was more convenient than using public transit even though bus service was available within one block of his house and there was an LRT station close to his office. During busy periods lasting up to 3 weeks, he worked until 1:00 a.m. and was aware of Telus policy to reimburse employees who worked late (past 11:00 p.m.) and acknowledged he could have taken taxis home instead of driving. He estimated the fare would have been at least \$30. He decided to drive to the airport when travelling by air to Calgary rather than paying for taxis and claiming reimbursement.

[141] According to the evidence of Connor from ETS, there was 15-minute off-set bus service to the stops near Bayrack's residence during peak periods because he could catch one going either way around the route to Millgate station for LRT transportation downtown. Bayrack could have left downtown at 9:08 p.m., and arrived at Millgate by 9:30 p.m., then travelled by bus to a stop two blocks from his home, arriving at 10:30 p.m.. That trip by car would have taken about 30 minutes.

[142] The evidence established that Telus elected to continue the free parking privilege enjoyed by Bayrack during his tenure with predecessor telecommunication entities that became part of the Telus organization. He did not have apply for that pass and received it even though his position was in pay band 4. Before receiving the pass from Ed Tel or – perhaps – AGT - he drove to work. When visiting Telus Plaza on business, he drove - a few blocks - even though his pass did not permit him to park there and he had to pay for a space.

[143] I cannot conclude on the evidence that there was any substantial economic benefit accruing to Telus as a result of having provided the parking pass to Bayrack. The major portion of the economic advantage accrued to Bayrack even though the cost of reimbursing him for as many as 20 taxi trips after 11:00 p.m. during a busy period could have amounted to between \$600.00 and \$700.00. The Minister assessed the fair market value of the space at \$1,926.00 in 1998. The Minister assumed the appellant worked in the building at 44 Capital – 10044 – 108 St. - and assessed the benefit on that basis. The evidence is confusing on this point as Bayrack testified he had a pass for the lot at 107 St. and 100 Ave. and in paragraph 7 of his admissions (Exhibit A-1) stated his pass was for the “parking lot located in the building” at that address. I draw the inference that the parking space which is the subject of this appeal was the one inside 44 Capital as there is no basis for finding that this assumption by

the Minister is incorrect when examining the whole of the evidence relative to this point. The parties agreed the fair market value of a space in the lot at 107 St. and 100 Ave. was only \$720.00 per year.

[144] The assessment of the Minister is correct. The appeal is dismissed.

Randall L. Edgar:

[145] Edgar was a former AGT employee and - in 1998 - worked for TAS as a Corporate Financial Analyst, a position in pay band 4. He had not applied for a parking pass and received it from his executive assistant. He was able to park on every occasion even without having an assigned stall. Before he received the pass, he used public transit to travel to work but discovered he could work an extra hour each day if he drove instead. At most, he used the parking space 3 times for personal reasons in 1998. It was not a condition of his employment that he own or operate a vehicle and did not recall having used his car for business purposes that year nor was he required to take any taxis. He was accustomed to using public transit but used the pass which he assumed was to facilitate him working additional hours. He acknowledged that without the pass he would have had to work as late as required in order to meet specific filing deadlines. He had recorded overtime worked – on weekends - up to February 1998, but not after. Public transit during peak hours provided 5 trips downtown in the morning and 8 returns in the afternoon. Even leaving a downtown stop - near Telus Plaza - as late as 9:38 p.m., he would have arrived at the stop near his home at 10:38 p.m. or by choosing the 9:08 p.m. bus, could have been at his home stop by about 9:55 p.m., a trip of 47 minutes.

[146] The evidence demonstrates that the use of a vehicle was not required for Edgar to perform his job. He did not use it in the course of his workday and did not have to travel by taxi for business during 1998. The free pass provided him with the opportunity to drive his own car to work rather than take public transit. He chose to do so but acknowledged that without the pass he would have used other means of transportation to discharge his responsibilities to Telus. The economic benefit flowing to Telus from the provision of the parking pass was negligible. However, it was important to Edgar since it had a fair market value of \$1,926.00 per year, including GST. He was the primary beneficiary of that benefit.

[147] The assessment of the Minister is correct. The appeal is dismissed.



Roy A. Viteychuk:

[148] Viteychuk was employed as a Manager – in pay band 3 – in 1998 and was responsible for about 40 employees in the Switch Maintenance and Analysis department. He worked from an office at the Main Wire Centre at 104 St. and 104 Ave. and received his pass at some point during his employment – since 1970 - with Ed Tel. Before receiving the pass, he paid for parking in lots operated by Telus. Afterwards, he parked in a heated, underground stall and did not use the pass for personal reasons but did lend it – on occasion – to other Telus employees. He did not require a vehicle to perform his job but found it advantageous to have it parked nearby in the event of interruptions to telephone service due to some occurrence, often related to weather conditions, that would have required him to attend at one of the 8 central service or host locations to restore service by installing replacement circuit packs. Viteychuk acknowledged that without the pass, probably, he would have used the shuttle bus service between Edmonton and his home in Sherwood Park. He admitted that any overtime hours worked in 1998 were not as a result of Telus having provided him with a parking pass and could not recall any emergencies that had required additional hours of work.

[149] The facts establish there was no significant business component in the use of the parking pass by Viteychuk. It was convenient for him and eliminated the need to ride the shuttle bus to and from Sherwood Park or to find alternate parking and pay for it. The free parking constituted a benefit that provided an economic advantage to him and not to his employer. As a result, it is taxable in his hands.

[150] The assessment of the Minister is correct. The appeal is dismissed.

Carol Amelio:

[151] Amelio worked for Telus as a Director, Customer Relations, a position in pay band 5. Although she did not maintain any time records in 1998, she estimated she worked an average of 50 hours per week. She acknowledged she had not been compensated directly for overtime and – at her executive level – considered that was expected in the context of Telus corporate culture. She received her free parking pass in 1992 and, although she had not applied for it directly, had indicated during her interview for a legal counsel position that if hired, she wanted secure parking in Telus Plaza. During the course of her employment in 1998 – as a Director - she was never instructed by Telus that he had to use her vehicle for business purposes. Instead, it was used primarily for travelling to and from work, although she did drive to certain

locations to conduct investigations in response to complaints. Amelio was concerned about security and the underground, lighted, facility in Telus Plaza suited her needs as it had accessible panic buttons and she could request a security person to accompany her to the vehicle. Amelio lived within 2 blocks of a bus stop but had not considered public transit as a viable alternative. She could have used taxis to travel to and from her home in southeast Edmonton when working early or late and could have taken taxis to the airport and would have been reimbursed by Telus. Without the free pass, Amelio would have had to pay for similar parking privileges in downtown Edmonton in 1998. She had no difficulty parking in a space in the Telus Plaza lot throughout the year, even though she did not have an assigned stall.

[152] It is apparent Amelio chose to drive her vehicle to work and to use the free parking pass provided by Telus. Her reasons for doing so are completely reasonable both from the perspective of her own sense of security and to facilitate working flexible hours at the office rather than taking work home where she preferred to devote time to her family. I cannot see how Telus received any substantial benefit from having provided the parking pass to Amelio and there is no evidence there was any consideration given to the supply of that privilege other than her rank within the organization. Amelio received something of substantial value that provided her with a level of comfort and convenience that could only have been attained otherwise by paying fair market value to someone operating a similar facility in downtown Edmonton. Amelio – not Telus – was the primary beneficiary of the economic advantage of the benefit.

[153] The assessment of the Minister is correct. The appeal is dismissed.

Henry Lazarenko:

[154] Lazarenko did not testify. However, there are certain assumptions of fact relied on by the Minister in the Reply to the Notice of Appeal and admissions of fact forming part of Exhibit A-1 that are relevant to his appeal. In 1998, Lazarenko was General Manager of Engineering and Construction, a position in pay band 5. He had a 7.5 hour workday and never worked beyond those hours during that year. He started working for Ed Tel in 1965, and received his free parking pass – in 1990 - for an assigned stall in the lot at 44 Capital. It was not a condition of employment that he have a vehicle to perform his duties. However, he did use his vehicle for business and received the flat sum of \$120.00 per month from Telus rather than submitting expense claims for actual kilometres travelled. Before obtaining the pass, he either drove to work or took public transportation. Without the pass, he would have driven to work and paid for parking.

[155] It is highly probable that Lazarenko's entitlement to the free pass – and assigned stall – was based on a combination of his rank in the organization and length of service with Ed Tel as there was no identifiable business purpose otherwise connected with its issue. The pass did not facilitate any overtime work and Lazarenko was paid an agreed sum for using his vehicle in the course of his employment. With respect to the pass, he received something of considerable value and Telus received no measurable monetary benefit in return. The entire benefit – in my view – accrued to Lazarenko and the economic advantage derived was assessed at \$1,926.00 by the Minister.

[156] The assessment of the Minister is correct. The appeal is dismissed.

[157] In the course of submissions, counsel for the respondent invited me to embark on an attribution of benefits in the appropriate case so if I were to find Telus was the primary beneficiary I could assign a proportionate benefit to the recipient - for example, 30% or more - in the Delaloye appeal. I declined to do so and suggest that in taxable benefit situations – more so if they are parking cases – the courts do not embark on this exercise. I think it would occupy a considerable amount of time by requiring a detailed examination of circumstances in each case. It would clutter up the main issues and any decision with respect to apportionment of benefits would probably be based on rough estimates because it is doubtful the quality of evidence adduced – in most appeals - would accommodate findings of fact based on reliable, precise information. In my opinion, it is better to stick with the all-or-nothing approach suggested by Professor Krishna and as adopted in the jurisprudence to date. According to that philosophy, once the tipping point has been attained and the primary beneficiary of the payment has been identified, then any ancillary benefit derived by the employee is ignored and no attempt is made to quantify it for the purpose of inclusion into income.

[158] It is apparent these taxable benefit appeals will continue to be case-specific. The range of results will encompass clear-cut, resounding victories, nail-biting overtime shoot-out wins, hitting-the-goalpost efforts that fall just short, decently-played contests ending in a loss, and complete blowouts where one party never had any greater chance of survival than a tiny ice floe in a future envisaged by Al Gore.

[159] With regret, I doubt any magic formula or template is capable of resolving the central issue in most circumstances but there are some factors that could be

considered by employers prior to providing a benefit to an employee if the matter of taxation is a matter of concern.

1. Is the benefit provided automatically upon attainment of a certain rank or pursuant to an obligation in some agreement without reference to the nature of the duties performed.
2. If there are criteria of entitlement – particularly those relating to security concerns – have they been examined with respect to employees in specific positions or in special categories, departments or business units.
3. If a vehicle is required in the course of employment, is that need expressed in the job description and if the matter of vehicle use arises subsequently, is there a policy in relation to that.
4. If there are times in the year when any benefit accrues primarily to the employer and others when it does not, how are those periods identified and the details of relevant circumstances recorded.
5. Has there been a cost analysis undertaken in the course of a comparative examination - to some reasonable standard - to determine whether the payment with respect to the benefit will be primarily for the convenience of the employer.
6. Is there a method of review to determine whether a material change in circumstances has invalidated the original reasons for providing the benefit.
7. Instead of providing parking space on an individual basis, has the concept of a pool parking been considered whereby a certain number of spaces can be used by different employees as and when required for specific business purposes.

[160] The thrust of modern jurisprudence is to avoid second-guessing business decisions made by taxpayers with respect to their conduct whether attempting to attain a reasonable profit or in choosing to make a certain expenditure or writing off a bad debt in a certain taxation year. There is a developing philosophy in the judiciary to give greater weight to the clearly-expressed intentions of the parties in the course of determining the status of a working relationship. It is reasonable to expect judges would be reluctant to interfere in business decisions made by employers with respect to payments for benefits, on condition there was some reasonable basis for providing them rather than having done so under circumstances where the only rational

conclusion is that they were dispensed as a perquisite, a status symbol or a reward for long service.

[161] I am indebted to all counsel for their efficient and competent conduct of these appeals, particularly with respect to their preparation of binders containing exhibits, admissions of fact and other relevant material including submissions.

[162] The respondent is entitled to costs on a party to party basis. Since two appeals were allowed – out of 16 – and the proceedings were based on common evidence, I consider it reasonable that the respondent's costs correspond to that level of success, i.e. 14/16 or 87.5%. However, I will hear counsel if they wish to deal otherwise with the matter of costs.

Signed at Sidney, British Columbia, this 17th day of May 2007.

"D.W. Rowe"

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Rowe, D.J.

CITATION:

2007TCC272

COURT FILES NOS.:

2003-1188(IT)G, 2003-1231(IT)G,  
2003-1232(IT)G, 2002-4231(IT)G,  
2003-1239(IT)G, 2003-1240(IT)G,  
2003-1187(IT)G, 2003-1242(IT)G,  
2003-1230(IT)G, 2003-1197(IT)G,  
2003-1198(IT)G, 2002-4221(IT)G,  
2002-4220(IT)G, 2003-1196(IT)G,  
2003-1195(IT)G, 2003-1191(IT)G,

STYLE OF CAUSE:

DESMOND A. ADLER,  
DOUGLAS ALLOWAY,  
CAROL AMELIO, DONALD BARNES,  
MARY-PATRICIA BARRY,  
RANDY BAYRACK, JOANNE BEATON,  
MYRON S. BORYS, BRUCE R. BRANDELL,  
HENRY C. BRUNS, GARY CERANTOLA,  
DAN DELALOYE, RANDALL L. EDGAR,  
JOHN R. HARRINGTON,  
HENRY P. LAZARENKO  
ROY A. VITEYCHUK AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING:

Edmonton, Alberta

DATE OF HEARING:

January 8 - 12, 2007

REASONS FOR JUDGMENT BY:

The Honourable D.W. Rowe, Deputy Judge

DATE OF JUDGMENT:

May 17, 2007

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