

Docket: 2006-907(IT)G

BETWEEN:

PATRICIA DENIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard together with the appeals of *Pache Denis* (2006-908(IT)G)  
on October 22, 2007 at Vancouver, British Columbia.

Before: The Honourable D.G.H. Bowman, Chief Justice

Appearances:

Counsel for the Appellant: Richard B. Wong

Counsel for the Respondent: Raj Grewal

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JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2001 and 2003 taxation years are allowed with costs and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with these reasons.

There should be one set of counsel fee for both appellants.

Signed at Ottawa, Canada this 1<sup>st</sup> day of November 2007.

“D.G.H. Bowman”

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Bowman, C.J.

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“D.G.H. Bowman”

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Bowman, C.J.

Citation: 2007TCC656  
Date: 20071101  
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Respondent.

### **REASONS FOR JUDGMENT**

#### **Bowman, C.J.**

[1] These appeals were heard together. Mr. and Mrs. Denis are partners in a bed and breakfast (“B&B”) business that they carried on in Ashcroft, British Columbia. In computing his income for the 2001, 2002 and 2003 taxation years, Mr. Denis calculated losses from that partnership on the basis that the partnership sustained non-capital losses for those years of \$43,598, \$41,153 and \$35,149, respectively. Only Mrs. Denis’ 2001 and 2003 taxation years were before the Court. They also attributed 50%, 98% and 60% of the loss to Mr. Pache Denis for the three years.

[2] The Minister of National Revenue reassessed them for these years:

- (a) to disallow a portion of the losses claimed pursuant to subsection 18(12) of the *Income Tax Act*;
- (b) to reallocate the losses equally to Mr. and Mrs. Denis.

[3] There is no issue between the parties that the proper allocation of losses between the spouses is 50/50. Moreover, there is no dispute that the revenues, expenses and losses of the partnership were properly calculated, subject only to the application of subsection 18(12).

[4] Subsection 18(12) reads as follows:

**(12) Work space in home** — Notwithstanding any other provision of this Act, in computing an individual's income from a business for a taxation year,

(a) no amount shall be deducted in respect of an otherwise deductible amount for any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

(i) the individual's principal place of business, or

(ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business;

(b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount for the work space that

**(12) Travail à domicile.** Malgré les autres dispositions de la présente loi, dans le calcul du revenu d'un particulier tiré d'une entreprise pour une année d'imposition :

a) un montant n'est déductible pour la partie d'un établissement domestique autonome où le particulier réside que si cette partie d'établissement :

(i) soit est son principal lieu d'affaires,

(ii) soit lui sert exclusivement à tirer un revenu d'une entreprise et à rencontrer des clients ou des patients sur une base régulière et continue dans le cadre de l'entreprise;

b) si une partie de l'établissement domestique autonome où le particulier réside est son principal lieu d'affaires ou lui sert

is deductible in computing the individual's income for the year from the business shall not exceed the individual's income for the year from the business, computed without reference to the amount and sections 34.1 and 34.2; and

exclusivement à tirer un revenu d'une entreprise et à rencontrer des clients ou des patients sur une base régulière et continue dans le cadre de l'entreprise, le montant déductible pour cette partie d'établissement ne peut dépasser le revenu du particulier tiré de cette entreprise pour l'année, calculé compte non tenu de ce montant et des articles 34.1 et 34.2;

(c) any amount not deductible by reason only of paragraph (b) in computing the individual's income from the business for the immediately preceding taxation year shall be deemed to be an amount otherwise deductible that, subject to paragraphs (a) and (b), may be deducted for the year for the work space in respect of the business.

c) tout montant qui, par le seul effet de l'alinéa b), n'est pas déductible pour une partie d'établissement domestique autonome dans le calcul du revenu d'entreprise du particulier pour l'année d'imposition précédente est déductible dans le calcul du revenu d'entreprise du particulier pour l'année, sous réserve des alinéas a) et b).

[5] "Self-contained domestic establishment" (« *établissement domestique autonome* ») is defined as follows in section 248:

"self-contained domestic establishment" means a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats;

« établissement domestique autonome » Habitation, appartement ou autre logement de ce genre dans lequel, en règle générale, une personne prend ses repas et couche.

[6] The sole issue is whether the Minister was justified in applying subsection 18(12) and restricting the losses claimed under that provision.

[7] The parties entered into an Agreed Statement of Facts ("ASF"). It is attached as Schedule A to these reasons. It was supplemented by oral evidence of Mr. Denis.

[8] There have been a number of cases of this type decided in this Court. I see no inconsistency between them but the judges have reached different conclusions depending on the facts of each case.

[9] One thing is quite clear and that is that subsection 18(12) of the *Act* can on its plain wording apply to a B&B operation. Whether it does so in a particular case depends on a determination of fact. In this case the question is whether the appellants “resided” in the entire two-storey building or, put differently, whether the entire house was the “self-contained domestic establishment” or only the 540 square feet which the appellants say was a private area for their own use. (Area 1 on the plan of Level 1 attached to the ASF). The appellants constructed the building with the intention of running a B&B.

[10] Paragraph 38 of the ASF reads:

38. The building was built with the intention of running an efficient bed and breakfast business. The 540 square feet private area was designed and built to serve the personal needs of the Denises and was built without its own living room, dining room, in suite laundry, kitchen and storage room because by duplicating these areas inside the 540 square foot private area, the Denises would have wasted a lot of space that would be been [sic] required to build what they thought would be a profitable bed and breakfast business.

[11] The building was not constructed as a private residence with the intention that the Denises would live in the 4,448 square feet making up the two levels. It was built to house a commercial operation which contained an area in which they would live. This fact distinguishes it from a B&B operation in which some rooms in an existing home are used to run a B&B after the children have left home.

[12] The essential question is not whether the 540 square feet which the appellants called their private living space is a self-contained domestic establishment; rather it is whether the rest of the 4,448 square feet that was intended to be used and was in fact used for the B&B operation forms part of the “self-contained domestic establishment”. For subsection 18(12) to apply the “work space” must be part of a self-contained domestic establishment. I have concluded that the appellants did not reside in that portion of the building that was devoted to and used for the accommodation of guests in the B&B operation.

[13] Counsel for the Respondent contends that the entire building is a self-contained domestic establishment because occasionally friends or family would be allowed to sleep in the guest rooms free of charge and sometimes at family gatherings they would eat in the sitting area (10.4). I do not think that the occasional use for such purposes amounts to residing. I do not think that the occasional use of the B&B facilities made it a place in which the appellants “as a

general rule sleep[s] and eat[s]”. Moreover, it is quite unreasonable to suggest that the appellants would construct a two-storey building of 4,448 square feet for use as a private residence where that structure has separate entrances from outside for each of the five private guest rooms. Of the five guest rooms, one has a private ensuite bathroom and two on level one have a bathroom between them and two on level two share a bathroom.

[14] So far as the use of the guest facilities by family and friends is concerned, this is minimal. (ASF para. 51) Family and friends in 2001, 2002 and 2003, stayed overnight in guest rooms, less than seven nights per year.

[15] As stated, the cases fall on both sides of the line depending on the facts. They depend essentially on the extent to which the B&B operation impinges upon or is integrated with the ordinary living arrangements of the family that is carrying on the business. For example in *Maitland and Konduc v. The Queen*, 2000 DTC 3622, Porter D.J. appears to have focused primarily on the question whether the B&B operation was a hotel. However, the finding of fact that was crucial to Porter D.J.’s dismissal of the appeal was found in paragraph 26.

Upon considering all of the evidence, I find that this was not a “hotel” operation, but indeed was a “bed and breakfast” operation within the normal meaning of that word; that is to say that guests came and stayed in the home of the Appellants. It is true that there was more of a commercial nature to the operation than is often the case. Nonetheless, the Appellants occupied exclusively, with family members, a major part of the premises and shared with their guests other common areas. It is clear that it was originally a dwelling house. It had been used for intervening purposes, but during the time in question, it was occupied as a residence by the Appellants. When no one else was there, they still occupied it as their residence. Although they had other places available to them to stay from time to time, as a general rule, they slept and ate on these premises. It was a dwelling house or a similar place of residence. It was not a commercial office building or regularly constructed hotel or motel. In my view, it clearly falls within the definition of a “self-contained domestic establishment”, set out in the *ITA*. In my opinion, it is not realistic to draw an analogy between this situation and a manager living in a suite in a regular motel or hotel. In that situation, the operation is clearly a hotel or motel in which the manager lives in a small part. Here, this was clearly their home into which they received paid guests and that remained so despite the high quality of their operation, the hard work they put in, and their original plans to operate it as a bed and breakfast operation.

[16] The finding of fact made by Porter D.J. is simply not open to me on the evidence and agreed facts in this case. Obviously the B&B operation in that case was carried on in the portion of the dwelling house used by the appellants Maitland

and Konduc. That is simply not the case here. The Denises did not use the guest areas as their residence.

[17] Similarly in *Broderick v. The Queen*, 2001 DTC 3722, Justice Campbell, in dismissing the appeal made the following findings of fact:

. . . In respect to the present case before me the primary function of this property was a residence for the Appellant and his family and for a portion of each of the years in question it was used as a bed and breakfast. Three bedrooms were rented out but for whatever reasons, it ended up being a part time seasonal operation despite the intention and hard work of the Appellant. When guests were present, they confined themselves to the basement apartment for the majority of the time but except for keeping the three bedrooms clean and available, there was little need to restrict the balance of the upstairs portions particularly when months would pass with no guests or the potential for any. When guests were there, common areas of the house saw business and family life converge.

[18] In three other cases different factual conclusions led to different results. In *Sudbrack v. The Queen*, 2000 DTC 2521, the following was said at page 5:

[19] I think the better view, on the facts of this case, is that the separate living quarters of the family, which are essentially a separate apartment within the inn, constitute the self-contained domestic establishment. This appears to be the more reasonable approach and is, I believe, more consonant with what subsection 18(12) is seeking to achieve. Counsel for the Appellant referred to a decision of the Supreme Court of Canada in *Bell v. Ontario (Human Rights Commission)*, [1971] S.C.R. 756. That case dealt with the meaning of "self-contained dwelling". It is not of much assistance in this case because here we are dealing with a statutory definition.

[20] The Crown's position is that the inn as a whole is the self-contained domestic establishment. Tab 17 of Exhibit R-1 contains a detailed summary of the adjustments made under subsection 18(12). It allocates between expenses not related to the work area and the expenses related to the work area. No challenge is made to the arithmetical calculation if the fundamental assumption that the self-contained domestic establishment is the inn as a whole and the "work space" in that self-contained domestic establishment is the inn as a whole as well is correct.

[21] In my view that basic assumption is wrong. The self-contained domestic establishment is the family apartment. Moreover, if the inn as a whole is the "work space" that work space is "the individual's principal place of business". Accordingly there is, in effect, excised from the area to which the limitation in paragraph (a) applies the 85% of the inn in which the family does not live.



[22] The work space within the "self-contained domestic establishment" (the family apartment) would consist of the kitchen which served the dual function as the family cooking space and the restaurant cooking space and the small room where Mr. Sudbrack kept his computer, records and other equipment for the purposes of the business.

I think the same conclusion is justified here, subject to what I propose to say below with respect to the kitchen and laundry.

[19] In *Moczulski v. The Queen*, 2003 DTC 3982, Justice Bell in allowing the appeal said this at page 4:

[15] The Appellants' apartment is, in my judgment, a self-contained domestic establishment. The fact that the Appellants used the kitchen which produced food for guests and the laundry facilities which they used for guest linens does not prevent the apartment from being a "self-contained domestic establishment". That definition includes an *apartment* or *other similar place of residence*. The Appellants, as a general rule, sleep in this apartment. There was no evidence that they eat in the apartment. However, the definition does not exclude an apartment or similar place of residence where the occupant or occupants do not eat. The definition uses the qualifying term "as a general rule".

[16] One should keep in mind the purpose of this provision. The Department of Finance in Explanatory Notes relating to the legislative guidelines for deduction of expenses in respect of space used as an office or other workplace in taxpayers' residences reads as follows:

New subsection 18(12) of the Act restricts the deduction of expenses incurred by an individual in respect of a home office. No amount may be deducted in respect of a "work space" in a self-contained domestic establishment in which the individual resides unless certain conditions are met. The work place must be either the principal place of business of the individual or used by him exclusively for the purpose of earning income from business and be used on a regular and continuous basis for meeting his clients, customers or patients in respect of the business. Where these conditions are met, the individual may deduct otherwise allowable amounts, but only to the extent of his income from the business for the year. To the extent that this latter requirement restricts the deduction of a portion of work space expenses for a particular year, such expense are treated as work space expenses incurred in the immediately following year, thus permitting an indefinite carryforward of this type of expense. This amendment is applicable to fiscal periods commencing after 1987.

It is noted that the emphasis of the above explanatory note respects a "work space" in an ordinary domestic establishment. This normally includes reserving

and equipping a room or other space for business purposes. The circumstances in the instant appeal do not fall into that category.

[17] The Appellants, in this case, bought a commercial building and commenced operating it for the purposes described. The use of the main entry to the building and of the main hall leading to the doorway to the Appellants' residential quarters does not diminish the description of such quarters being a self-contained domestic establishment. With respect to use of laundry facilities shared with the business, ordinary apartment buildings routinely share such facilities. There are many persons who live in apartments or houses and do not eat there as they have no interest in shopping or preparing food or washing dishes or cleaning the premises after such use. Surely they cannot be said not to be living in a self-contained domestic establishment.

[20] A case that is somewhat similar on the facts to this one is a decision by Justice McArthur in *Rudiak v. The Queen*, 2002 DTC 3901. At page 4 he said:

. . .The Respondent referred to the following areas of the entire structure that had mixed use (my observations are included after each reference):

- (a) the garage was used in part for the bed and breakfast storage; (this was obviously a limited business use);
- (b) the kitchen was used to make the breakfast for guests of the bed and breakfast; (the guest did not use or occupy the kitchen. The prepared breakfast was served in the guest's dining room);
- (c) the laundry room served both the bed and breakfast and personal use; (this is accurate but again the guests did not use the Appellant's laundry room);
- (d) the office in the Appellant's apartment was used for the needs of both; (it was the Appellant's private office and used exclusively by him);
- (e) two weeks annually the bed and breakfast area was used to accommodate friends and family; (while this is accurate, it is insignificant in the overall scheme);
- (f) four months of the year, the off-season, the Appellant and his wife had access to the bed and breakfast area; (same comments as in item (e));
- (g) heating and electrical services were common to both areas; (I do not believe this is significant);
- (h) the City of Stratford did not recognize a separate apartment in their municipal tax bill; (What does that prove?);

- (i) the Appellant was obligated to live on the bed and breakfast premises to comply with municipal zoning requirements; (not relevant);
- (j) the Appellant's bed and breakfast brochure advertised "Welcome to our home". (advertising puffing and privilege).

[21] Which side does this case fall on? In my view clearly it falls on the *Rudiak, Sudbrack, Moczulski* side. I emphasize several points that I think are important.

- (a) The appellants did not reside in the entire house. They resided in areas which they designed, built and used as their personal living quarters and did not reside in the area designed, built and used for the B&B operation.
- (b) The self-contained domestic establishment was the living area, the 544 square feet, not the entire house.
- (c) The fact that they occasionally let friends or family stay in the guest rooms does not turn the entire house into a self-contained domestic establishment.
- (d) With respect to the fact that they used the kitchen and laundry for both business and personal use does not turn the entire house into a self-contained domestic establishment, or conversely prevent the living area (the 544 square feet Area 1 on the sketch of Level 1) from being a self-contained domestic establishment. I respectfully adopt the reasoning of Bell J. in *Moczulski* and McArthur J. in *Rudiak*.

[22] The appeals are therefore allowed with costs and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with these reasons.

[23] There should be one set of counsel fee for both appellants.

Signed at Ottawa, Canada, this 1<sup>st</sup> day of November 2007.

“D.G.H. Bowman”

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Bowman C.J.

CITATION: 2007TCC656

COURT FILES NOS.: 2006-907(IT)G  
2006-908(IT)G

STYLE OF CAUSE: PATRICIA DENIS AND  
PACHE DENIS  
V. HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, B.C.

DATES OF HEARING: October 22, 2007

REASONS FOR JUDGMENT BY: The Honourable D.G.H. Bowman  
Chief Justice

DATE OF JUDGMENT: November 1, 2007

APPEARANCES:

    Counsel for the Appellant: Richard B. Wong

    Counsel for the Respondent: Raj Grewal

COUNSEL OF RECORD:

    For the Appellant:  
        Name:  
        Firm:

    For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
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**SCHEDULE 'A'**

2006-907(IT)G

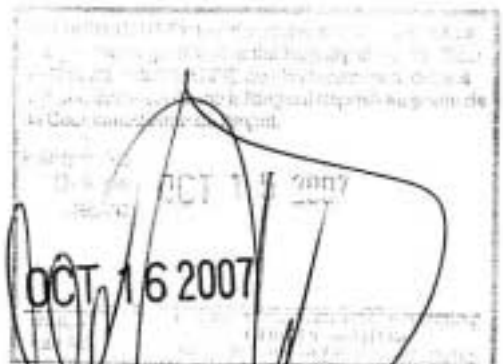
2006-908(IT)G

**TAX COURT OF CANADA**

**BETWEEN:**

**PATRICIA DENIS  
PACHE DENIS**

- and -



**Appellants**

**HER MAJESTY THE QUEEN**

**Respondent**

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**JOINT STATEMENT OF AGREED FACTS**

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Raj Grewal  
Counsel for the Respondent

For the purpose of the hearing of the above referenced appeals only, the Appellants and the Respondent agree to be bound by the following facts, the truth of which are hereby admitted by all parties.

Further, the Appellants and the Respondent agree that they will not, at the hearing of the above referenced appeals, adduce evidence of any facts which contradict the facts agreed to herein.

### **BACKGROUND FACTS**

1. Pache and Patricia Denis are married.
2. The Denises operated a bed and breakfast business in Ashcroft, British Columbia as equal partners under the name "Willow'n Bed and Breakfast (the "Partnership")." The bed and breakfast has a website, a true copy of which is at Tab 1 of the Joint Book of Documents.
3. The Partnership's fiscal year end was the same as the calendar year end.
4. During the years at issue, Pache Denis was employed as a superintendent of schools for School District No.74 (Gold Trail) during 2001, 2002 and 2003. His salary was \$105,000 per annum. Pache spent approximately 60 hours per week in the course of his employment as the Superintendent of Schools. His annual vacation entitlement was 10 weeks. Pache had most school holidays and weekends free. In late February of 2003, Pache was on leave from the district for political and care giving reasons and by early June he was on severance from the district.
5. Patricia Denis was employed by School District No.74 (Gold Trail) as a school teacher but was on medical leave starting in September of 2001 and has remained on medical leave since that date. Before she went on medical leave, Patricia did

not work during the Christmas, spring, Easter and summer (July and August) breaks nor did she work weekends or statutory holidays.

### THE REASSESSMENTS

6. During 2001, 2002 and 2003, in computing the income/loss from the Partnership, certain expenses that were incurred for the purpose of gaining or producing income from the bed and breakfast business were deducted and it was determined that the Partnership incurred the following business losses in the relevant years:

Year	Business Losses
2001	(43,598)
2002	(41,153)
2003	(35,419)

7. Those business losses of the Partnership for 2001, 2002 and 2003 were allocated to Pache and Patricia Denis and reported and claimed by them when filing their tax returns for those respective years.
8. By notices of reassessment dated December 13, 2004, the Minister of National Revenue (the "Minister") reassessed Pache and Patricia Denis for their 2001, 2002 and 2003 taxation years reducing the business losses reported and claimed by them with respect to the bed and breakfast business of the Partnership.
9. The reassessments and the resulting reduction of the business losses of the Partnership were partially and largely a result of the Minister determining that subsection 18(12) of the *Income Tax Act* applied to restrict the expenses that Pache and Patricia Denis could deduct in computing the income or loss from the bed and breakfast business of the Partnership.

10. Pache Denis objected to the reassessments with respect to his 2001, 2002 and 2003 taxation years by notice dated March 8, 2005.
11. Patricia Denis objected to the reassessments with respect to her 2001 and 2003 taxation years by notice dated March 8, 2005.
12. By notices dated December 28, 2005, the Minister confirmed the reassessment of Pache Denis' 2003 year and varied the reassessments of his 2001 and 2002 years to allow meals and entertainment expenses.
13. By notices dated December 28, 2005, the Minister confirmed the reassessment of Patricia Denis' 2003 taxation year and varied the reassessment of her 2001 taxation year to allow meals and entertainment expenses.
14. The documents titled "Pache and Patricia Denis Willow'N Bed and Breakfast Statement of Business Activities" for the 2001, 2002 and 2003 taxation years at Tab 6 of the Joint Book of Documents accurately indicates the expenses that were disallowed by the Minister pursuant to subsection 18(12) of the Income Tax Act in calculating the income or loss of the Partnership for the 2001, 2002 and 2003 taxation years.

## **THE BUILDING**

15. The Partnership's business is carried on from a building belonging to the Denises;
16. An accurate floor plan (the "Map") of the building is reproduced at Tab 4 of the Joint Book of Documents and as Schedule "A" to this Joint Statement of Agreed Facts.



17. A floor plan of the building with greater detail is reproduced at Tab 5 of the Joint Book of Documents.
18. The Denises had the building built with the intention of running a bed and breakfast business out of it.
19. The building has five guest rooms, named Wicker (see number 7 on Map), Birdhouse (see number 8 on Map), Willow (see number 18 on Map), Garden (see number 19 on Map) and Gallery Room (see number 11 on Map).
20. During the years at issue, the Denises did not hire any individual or corporation to perform work related to the business of the partnership.
21. The building has two levels and is approximately 4,448 square feet in total with each level consisting of approximately 2224 square feet. There is also a 600 square foot garage/shop (see number 2 on Map), approximately 1,200 square feet of deck space on the first level (see number 10 on Map) and approximately 800 square feet of deck space on the second level (see number 20 on Map).
22. The building sits on 0.3003 hectares or 0.742 acres of land. It has a gazebo and a fishpond with a waterfall and beautiful gardens.
23. Each guest room has a separate entrance which opens to the exterior of the building. These exterior entrance doors have a deadbolt system and are lockable with a room key from the outside. These doors are not sliding glass doors. Photographs of these doors are at Tab 2 of the Joint Book of Documents. Guest rooms can also be accessed through doors from the interior of the building.
24. Guests that are staying in the Wicker guest room or the Birdhouse (see numbers 7 and 8 on Map) guest room usually use the washroom located between the two rooms (see number 10.5 on Map).

25. Guests that are staying in the Willow Room or the Garden Room (see numbers 18 and 19 on Map) usually use the washroom located between the two rooms (see number 21 on Map).
26. Guests that are staying in the Gallery Room will usually use the ensuite bathroom (see number 11.1 on Map) that is connected to that room.
27. Pache and Patricia Denis do not use the guest bathrooms (see numbers 10.5, 21 and 11.1 on Map).
28. Patricia and Pache Denis are the only persons permanently residing within the building.
29. Patricia and Pache Denis usually access the building from the garage entrance (see number 10.6 on Map) or the separate entrance in the private area of the Denises which opens to the exterior of the building (see number 10.7 on Map) while guests usually use the main entrance (see number 10.2 on Map) and the doors that open to their guest rooms from the deck. A photograph of the main entrance is at Tab 7 of the Joint Book of Documents. A photograph of the secondary entrance is at Tab 8 of the Joint Book of Documents. A photograph of the garage entrance is at Tab 9 of the Joint Book of Documents.
30. Guests sometimes use the secondary entrance (see number 10.2 on Map) when they first register and when they come in from their walks and for breakfast. Guests will also sometimes use the half bathroom off the secondary entrance.
31. The common areas of the building (see numbers 6, 10.4, 16 and 17 on Map) were designed to provide open areas to allow guest socialization, roominess and ease of services to the guests. Each bedroom is designed to have its own outside access for guest entrance and exit.

**THE DENISES' USE OF THE BUILDING**

32. The Denises habitually sleep in the building in a 540 square foot private area (see number 1 on Map) located on the first level of the building, which contains a bed, a walk-in closet and a full bathroom (that is, a bathroom with a toilet, sink, bathtub and shower). The Denises also habitually take their food into the 540 square foot room in order to consume it, although the food is usually prepared in the kitchen (see number 3 on Map).
33. Photographs of the interior of the 540 square foot private area are at Tab 3 of the Joint Book of Documents.
34. The 540 square foot private area contains a piano, a piano lamp, two easy chairs, a chair, eating/TV trays, two bedside tables with lamps, a television table, a bed, a fireplace, two dressers, (one with a mirror), a television table, a bed, a fireplace, two dressers (one with a mirror), a television, vcr, dvd, two telephones, an answering machine and various knickknacks.
35. The storage contained in the 540 square foot private area includes, the two dressers, a walk in closet with shelves, a linen cabinet, a built in counter, drawers and storages bins under the bed.
36. The 540 square foot private area does not contain a kitchen. The building has a kitchen which is located outside of the 540 square foot private area (see number 3 on Map) and this kitchen was used by the Denises to cook meals for themselves and for their guests. As a general rule, the Denises's guests (other than friends and family) were not allowed into the kitchen.
37. The 540 square foot private area does not contain an oven, stove or refrigerator.

38. The building was built with the intention of running an efficient bed and breakfast business. The 540 square foot private area was designed and built to serve the personal needs of the Denises and was built without its own living room, dining room, in suite laundry, kitchen and storage room because by duplicating these areas inside the 540 square foot private area, the Denises would have wasted a lot of space that would be been required to build what they thought would be a profitable bed and breakfast business.
39. The 540 square foot private area does not have its own utility connections.
40. The address of the the 540 square foot private area is the same as the address of the rest of the building.
41. The 540 square foot private area has never been rented out to guests or otherwise used by guests.
42. In addition to the 540 square foot private area the following parts of the building are only for the use of the Denises and are not used by guests:
  - a. The Kitchen (see number 3 on Map) (a photograph of the Kitchen is at Tab 10 of the Joint Book of Documents);
  - b. The Wine Cellar (see number 14 on Map);
  - c. The Storage Cabinets (see number 15 on Map); and
  - d. The Laundry Facilities (see number 10.3 on Map).
43. When friends and family visit or stay over night, the Denises sometimes use the pool table area (see number 16 on Map), the wet bar area (see number 13 on Map) and the formal dining and seating areas (see numbers 5, 6, 10.4, 17 on Map) for social activities such as coffee, tea, a drink, barbeque or dinner. When no one is visiting the Denises do not use these areas.

44. The following areas are mostly used by the Denises but also sometimes by guests, as explained below:
- a. Garage/shop area (see number 2 on Map) – guests have on two occasions stored their motorcycles in the garage and sometimes store their perishables in the fridge or freezer in the garage.
  - b. The secondary entrance (see number 10.2 on Map) – guests sometimes use this entrance when they first register and when they come in from their walks or breakfast and sometimes use the half bathroom located off the secondary entrance.
  - c. The computer/office Area (see number 12 on Map) – guests sometimes use the computer in this area to check their email, bookings and ferry schedule.
45. Patricia and/or Pache Denis use the computer/office area (see number 12 on Map) almost every day for business to check email and for personal use.
46. The maintenance of a bed and breakfast building and grounds is significant and a lot of time is and was spent on making sure everything looks good and is in perfect working condition. The shop/garage area (see number 2 on Map) is an essential part of their grounds and buildings maintenance program. The shop/garage area is used for personal storage and maintenance functions only. The shop/garage is never used for parking the personal vehicles of the Denises.
47. The five guest rooms in the building are used by paying guests of the Denises. However, when family or friends are visiting the Denises and staying overnight in the building, the Denises lodge them in the guest rooms. The Denises themselves do not use the guestrooms.

48. The Denises spend a lot of time in the yard for maintenance purposes (almost every day during the summer season and several days a week during the spring and fall).
49. Pache Denis uses the hot tub, which is located on the deck (see number 10 on Map) and the barbeque (see number 10 on Map). Patricia Denis does not use the hot tub and barbeque.

#### **ENTERTAINING FAMILY AND FRIENDS**

50. Family and social guests of the Denises have stayed in the building in guest rooms free of charge. This happens three or four times per year, on average.
51. Gatherings of family and friends or associates of the Denises at the building are not well documented as the Denises keep no formal records of these events. In reviewing their guest book, the Denises can recall the following visits during the years in dispute:
  - a. Pache's father, mother and brother visited on July 20, 2001 to July 23, 2001. They would have used two guest rooms for their visit.
  - b. Ann McColl and Ivor Miller (friends from Kelowna) visited in October of 2001 (the Denises don't know the exact date) and they would have stayed over 1 night.
  - c. Pache's father, mother and brother visited again on May 13, 2002. This was probably to help celebrate the Denises' wedding anniversary, which is May 13. They stayed overnight and used two guest rooms.
  - d. Brian and Bev Frankcombe visited on August 3<sup>rd</sup>, 2002. They are friends from Tasmania and would have stayed one night.

- e. Ann McColl and Ivor Miller visited again on July 9, 2003 and stayed over one night.
  - f. Pache's nephew, John Paul Denis, stayed on December 27, 2003 for one night.
  - g. Pache's immediate family visited during Christmas.
  - h. It is likely that the Denises had a barbeque or two for local friends but do not remember dates
52. The Denises have shared meals with friends and family in the kitchen using the island counter space (which had four stools) (see number 4 on the Map) or in the outside barbeque and eating area (see number 9 and 10 on the Map) or in the formal indoor dining area (see numbers 5 and 6 on the Map). The frequency of these happenings are provided below at paragraph 54.
53. The Denises have also used the dining (see numbers 5 and 6 on Map) and living room areas of the building (see numbers 10.4 on Map) to entertain family and friends. The frequency of these happenings are provided below at paragraph 54.
54. During visits from friends, family or associates, a meal at the kitchen island (see number 4 on Map) counter might occur half a dozen times per year. A meal outside (see numbers 9 and 10 on Map) might occur two or three times per year. A meal in the formal dining area (see number 6 on Map) might occur two or three times per year on average.
55. The yard is used three or four times per year for entertaining family or friends for a barbeque or just having a social visit. The yard includes the fishpond, lawns, waterfall and gardens.

56. Friends visit the Denises at the building occasionally. "Occasionally", in this context, means maybe once or twice per month they will have someone who lives in Ashcroft or Cache Creek visit and one or two times per year they will have an out of town friend visit them.
57. During the years at issue, two or three times per year the Denises had friends, family, or associates visit and sometimes stay over night. These social occasions are very casual and might include a barbeque or more formal dinner. On these occasions, the Denises would use the more formal dining areas (see numbers 5 and 6 on Map), guest rooms (if staying over) (see numbers 7, 8, 11, 18 and 19 on Map), the outside decks and chairs (see numbers 9 and 20 on Map), or the games room facilities (see numbers 16 and 17 on Map).
58. At Christmas time, Pache Denis' family (brother, sister, mother and father), the Denises' son, daughter and grandchild would usually stay over to celebrate Christmas. They usually stay only a few days and return home after Boxing Day. Patricia Denis' parents passed away some time ago and her brother rarely visits socially and he did not visit socially and stay during the years in question. The Denises do not have the exact dates for family and friends, as they do not keep records for non-paying guests. Friends visit once or twice per month but very rarely stay over night as they are usually passing through.

## **PAYING GUESTS**

59. Guests preferences dictate what rooms are rented out subject to availability. Many of the guests have their favourite room and choose their rooms when they book and often request the same room when they return. Guests prefer space and privacy, especially with respect to the use of bathrooms. The Denises' business is to accommodate their preferences when they can. This means using the bathrooms as booking preferences. So a single guest may choose to have a room



on level one or two and two single guests may choose alternate levels just to have their own space, privacy and bathroom.

60. Guests generally book a stay at the bed and breakfast in one of three ways:

- a. By internet - guests will view the website or print advertising and will inquire about rates and availability by email and will book if satisfied by sending credit card information by email, telephone or fax;
- b. By telephone - guests will do the same as above except they almost always give their credit card information by telephone; and
- c. By drop in - guests will show up at the door to check out the place, suitability, availability and rates and if satisfied will register.

61. The check-in procedure for guests is as follows:

- a. Guests will generally check in (register) by coming to the main entrance of the building (see number 10.1 on Map).
- b. If there is a choice of rooms, they will be taken on a tour, given the options and then choose. If there is only one room available they will be shown the room.
- c. Registration takes place at the kitchen island (see number 4 on Map) with the guest filling in the registration form and providing credit information if this has not previously been done.
- d. Guests are then invited to tour the common facilities (see numbers 5, 6, 10.4, 9, 13, 16, 17 and 20 on Map) and are given a run down of the amenities and how to work them if necessary.

- e. They are shown the outside areas and their private room entrance which most guests use to bring in their luggage.
- f. Breakfast options are discussed (time, allergies, menu) and decided on, usually in advance.

62. The following table lists all sales data, dates of guest's stays, whether they stayed on the first or second level of the building and the room in which the guest stayed, and payments for the 2001, 2002 and 2003 taxation years. Dates represent the date of check out. Multiple night stays are listed in terms of nights (for example 2 nights).

2001 Bed and Breakfast Sales		Guests Level Room			Paid
Date	Client				
01 13	Dodge / B&B	1	2	Willow	\$ 58.85
01 26	OMMSA / Refreshment Service				\$ 39.90
01 27	Robinson / B&B 2 nights	1	2	Willow	\$ 117.70
01 28	UCC / Kershaw / B&B	2	1 & 2	Birdhouse / Garden	\$ 117.70
03 15	Van Osch / B&B	1	2	Willow	\$ 58.85
04 01	Chapplow / 2 nights B&B	2	2	Willow	\$ 117.70
05 06	Webster / Regripping				\$ 57.00
05 23	Cargo Control / 5 nights B&B	1	2	Garden	\$ 294.25
05 24	Vennard / B&B	1	1	Birdhouse	\$ 58.85
05 28	Vennard / B&B / 2 rooms	3	1	Birdhouse/Wicker	\$ 58.85
06 01	Robinson / B&B & Lunch / 2 nights	1	2	Garden	\$ 137.70
06 09	Petie / B&B	2	2	Willow	\$ 58.85
06 17	Holt / 2 nights B&B	2	1	Birdhouse	\$ 117.70
06 17	Forbes / 2 nights B&B	2	2	Willow	\$ 117.70

06 19	Cargo Control / 6 nights B&B	1	1	Garden	\$ 353.10
07 01	Elson / B&B	2	2	Garden	\$ 58.85
07 17	Clayton / 4 nights B&B	2	2	Birdhouse	\$ 321.00
07 28	Michels / 2 nights / 2 rooms	3	2	Willow/Garden	\$ 235.40
08 05	Cargo Control / 3 nights B&B	1	1	Birdhouse	\$ 176.55
08 09	Cargo Control / 2 nights B&B	1	1	Birdhouse	\$ 117.70
08 11	McDonell / 3 nights B&B	1	1	Willow	\$ 176.55
08 14	Cargo Control / 2 nights B&B	1	1	Birdhouse	\$ 117.70
08 25	Lasala / B&B	2	1	Birdhouse	\$ 80.25
09 01	O'Connell / 7 nights B&B	1	2	Garden	\$ 262.15
09 03	Christie / 3 nights B&B	2	2	Willow	\$ 240.75
09 29	O'Connell / 11 nights B&B	1	1&2	Birdhouse/Garden	\$ 411.95
09 30	Fibich / B&B	2	1	Birdhouse	\$ 80.25
10 13	Miller / B&B	2	1	Birdhouse	\$ 58.85
10 18	BC Hydro / 2 B&B / 1 night	2	2	Willow/Garden	\$ 139.10
11 01	O'Connell / 6 nights B&B	1	2	Garden	\$ 224.70
11 26	Robinson / B&B & Lunch	1	1	Birdhouse	\$ 81.55
11 27	O'Connell / 7 nights B&B	1	2	Garden	\$ 262.15
11 28	BC Hydro / 3 B&B / 1 night	3	1&2	Willow/Garden/Birdhouse	\$ 208.65
12 12	BC Hydro / 2 B&B / 1 night	2	2	Willow/Garden	\$ 139.10
12 28	O'Connell / 9 nights B&B	1	1&2	Garden/Birdhouse	<u>\$ 337.05</u>
<b>Total</b>					<b><u>\$5,494.95</u></b>

**2002 Bed and Breakfast Sales****Guests Level Room**

<b>Date</b>	<b>Client</b>				<b>Paid</b>
01 31	Cargo Control / 2 nights B&B	1	1	Birdhouse	\$ 117.70
01 31	O'Connell / 7 nights B&B	1	2	Garden	\$ 262.15
02 03	Peake / 1 night B&B	2	2	Willow	\$ 80.25
02 23	Rideout / 2 nights B&B	2	2	Willow	\$ 139.10
02 26	O'Connell / 6 nights B&B	1	2	Garden	\$ 224.70
03 07	Erho / 1 night B&B	2	2	Willow	\$ 80.25
03 10	Fibich / B&B	1	1	Birdhouse	\$ 37.45
03 14	O'Connell / 5 nights B&B	1	2	Garden	\$ 187.25
03 16	Dunn & Johanson / 1 night B&B	2	2	Garden	\$ 69.55
03 17	Plotnikow / 1 night B&B	2	2	Willow	\$ 69.55
04 17	O'Connell / 4 nights B&B	1	2	Garden	\$ 149.80
04 18	Olund / 1 night B&B	1	2	Garden	\$ 69.55
04 19	Anderson / 1 night B&B	1	2	Willow	\$ 69.55
04 29	Thomson / 1 night B&B	3	2	Garden	\$ 80.25
05 04	Cargo Control / 2 nights B&B	1	1	Birdhouse	\$ 139.10
05 13	Dennis / 2 nights B&B	2	2	Garden	\$ 139.10
05 20	Cook / 2 rooms 2 nights B&B	3	2	Willow/Garden	\$ 192.60
05 23	Robinson / 2 nights B&B / lunch	1	1	Birdhouse	\$ 149.80
05 27	Webb / 1 night B&B	2	1	Birdhouse	\$ 80.25
05 30	O'Connell / 6 nights B&B	1	2	Garden	\$ 224.70
06 06	Bradford & Shannon / 1 night B&B	2	1	Birdhouse	\$ 80.25
06 15	Forbes / 2 nights B& B	2	1	Birdhouse	\$ 160.50
06 15	Baine / 2 nights B&B	2	2	Garden	\$ 160.50
06 15	Montgomery / 2 nights B&B	2	2	Willow	\$ 160.50
06 15	Hyatt / 2 nights B&B	2	1	Wicker	\$ 160.50

06 19 Bimmerst / 1 night B&B	2	2	Garden	\$ 80.25
06 25 Legg / 1 night B&B	2	1	Birdhouse	\$ 80.25
06 27 Foot & Dejong / 2 rooms B&B	3	1	Wicker / Birdhouse	\$ 149.80
06 27 Wilkie / 1 night B&B	2	2	Willow	\$ 80.25
06 30 O'Connell / 5 nights B&B	1	2	Garden	\$ 187.25
07 17 Giesbrecht / 1 night B&B	2	1	Birdhouse	\$ 80.25
07 18 O'Connell / 4 nights B&B	1	2	Garden	\$ 149.80
07 25 Stein / 2 rooms B&B	3	2	Willow/Garden	\$ 133.75
07 29 Simon / 2 rooms B&B	3	2	Willow/Garden	\$ 90.95
07 31 Kersgaard / 1 night B&B	2	2	Garden	\$ 80.25
08 01 Podmore / 1 night B&B	2	2	Garden	\$ 80.25
08 02 Christofferson / 1 night	3	2	Willow/Garden	\$ 101.65
08 03 Fix / 2 rooms	4	1	Wicker/Birdhouse	\$ 90.95
08 04 Davidson / 1 night B&B	2	1	Birdhouse	\$ 80.25
08 24 Haggarty / 1 night B&B	2	1	Birdhouse	\$ 80.25
08 28 O'Connell / 4 nights B&B	1	2	Garden	\$ 149.80
08 29 Chisholm / 1 night B&B	1	2	Garden	\$ 69.55
08 29 Willow'n gift set				\$ 18.32
08 30 Vanderburgh / 1 night B&B	2	2	Garden	\$ 80.25
08 30 Leever / 1 night B&B	2	2	Willow	\$ 80.25
09 09 Enderle / 1 night B&B	2	2	Garden	\$ 80.25
09 22 Hoffman / 1 night B&B	2	2	Garden	\$ 80.25
09 22 Kreye / 1 night B&B	2	2	Willow	\$ 80.25
09 30 O'Connell / 3 nights B&B	1	1	Birdhouse	\$ 112.35
10 27 O'Connell / 3 nights B&B	1	2	Garden	\$ 112.35
11 24 O'Connell / 3 nights B&B	1	2	Garden	\$ 112.35
12 23 O'Connell / 3 nights B&B	1	2	Garden	\$ 112.35

**Total****\$ 5,919.37**

2003 Bed and Breakfast Sales		Guests		Level Room	Paid
Date	Client				
01 12	Cargo Control	2	2	Willow	\$ 69.55
01 12	Furness	1	1	Wicker	\$ 69.55
01 20	O'Connell, 3 nights	1	2	Garden	\$ 112.35
01 29	Furness, 4 nights	1	1	Wicker	\$ 187.25
02 17	O'Connell, 3 nights	1	2	Garden	\$ 112.35
02 18	Furness	1	1	Wicker	\$ 37.45
03 30	Brown, 3 nights	1	1	Birdhouse	\$ 112.35
04 03	Robinson	1	1	Birdhouse	\$ 80.25
04 07	Kassian	1	2	Garden	\$ 80.25
04 07	Erho/BC Hydro	2	1 & 2	Willow/Garden	\$ 240.75
				Wicker	
04 09	Clayton	2	1	Birdhouse	\$ 37.45
04 14	O'Connell, 3 nights	1	2	Garden	\$ 112.35
04 17	Clayton	2	1	Birdhouse	\$ 37.45
04 20	Davis, 3 nights	1	2	Garden	\$ 112.35
04 20	Mason, 3 nights	1	1	Birdhouse	\$ 112.35
04 20	Garis, 3 nights	1	2	Willow	\$ 112.35
05 05	O'Connell, 3 nights	1	2	Garden	\$ 112.35
05 16	Simms	4	2	Willow/Garden	\$ 160.50
05 17	Dempsey	2	2	Willow	\$ 80.25
05 17	Six	2	2	Garden	\$ 80.25
05 22	Turpie	2	1	Birdhouse	\$ 80.25
05 30	Bradford-Shannon	2	2	Garden	\$ 80.25
05 31	Stevens Wedding Shoot				\$ 28.63
06 02	Howat, 2 nights	1	2	Garden	\$ 160.50

06 02 Johnny, 2 nights	1	2	Willow	\$	160.50
06 07 Rae-Bowman, 3 nights	2	1	Birdhouse	\$	240.75
06 07 Glassford	2	2	Garden	\$	80.25
06 08 Birdhouses				\$	34.35
06 12 Sheehy/Howard, 3 nights	2	2	Willow/Garden	\$	385.20
06 15 Fletcher, 2 nights	2	2	Garden	\$	160.50
06 18 GTONS Luncheon Service				\$	51.36
06 19 Srouffe	2	1	Birdhouse	\$	80.25
06 22 Cook, 2 nights	3	1	Wicker/Birdhouse	\$	203.30
06 23 Sheehy/Howard, 16 nights & 13 nights	2	2	Willow/Garden	\$	1,861.80
06 27 Penfold	1	1	Birdhouse	\$	80.25
06 29 Nolan	2	2	Garden	\$	80.25
06 29 Maple Crest Syrup				\$	12.88
07 05 Lang	2	2	Willow	\$	80.25
07 05 Hubbermin	2	1	Birdhouse	\$	80.25
07 06 Spalding	2	1	Birdhouse	\$	80.25
07 07 O'Connell, 3 nights	2	2	Garden	\$	112.35
07 08 Elbe	2	2	Willow	\$	80.25
07 11 Belbin	2	2	Willow	\$	80.25
07 16 Croft	2	2	Garden	\$	80.25
07 18 Grant	2	2	Garden	\$	80.25
07 21 Kassian	1	2	Garden	\$	80.25
07 26 Workman	2	2	Garden	\$	80.25
07 26 Jeffrey	2	1	Wicker	\$	80.25
07 26 Penny	2	1	Birdhouse	\$	80.25
07 26 Ellis	2	2	Garden	\$	80.25
07 31 Rendle	2	2	Willow	\$	80.25
08 02 Pritchard	2	1	Birdhouse	\$	80.25
08 04 O'Connell, 4 nights	1	2	Willow	\$	149.80

08 06 Jones	2	2	Willow	\$ 80.25
08 06 Warner	2	2	Garden	\$ 90.95
08 09 Scott	2	2	Willow	\$ 80.25
08 17 Aicken-Davidson	2	1	Birdhouse	\$ 80.25
08 20 McKague	2	2	Garden	\$ 80.25
08 21 Temple	4	2	Willow / Garden	\$ 117.70
08 25 Sidhu	2	2	Garden	\$ 80.25
08 26 Kettle	4	2	Garden / Willow	\$ 160.50
09 02 Furness, 2 nights	1	1	Wicker	
09 03 Paxton	2	2	Willow	\$ 80.25
09 06 Sutton, 5 nights	2	2	Garden	\$ 401.25
09 06 MacMillan, 5 nights	2	2	Willow	\$ 401.25
09 06 Herbert	2	1	Wicker	\$ 80.25
09 06 Claudia	2	1	Birdhouse	\$ 80.25
09 07 Olson	2	1	Wicker	\$ 80.25
09 07 Sidhu	2	1	Birdhouse	\$ 80.25
09 08 Furness, 1 night	2	1	Birdhouse	\$ 224.70
09 10 Griffin	2	2	Garden	\$ 80.25
09 13 Graetz	2	2	Willow	\$ 80.25
09 14 O'Connell, 3 nights	1	2	Garden	\$ 160.50
09 16 Horsey	2	1	Birdhouse	\$ 80.25
09 16 Harrison	2	2	Garden	\$ 80.25
09 20 Sidhu	2	2	Willow	\$ 80.25
10 03 Knox, 3 nights	2	1	Birdhouse	\$ 240.75
10 04 Knox	2	1	Wicker	\$ 80.25
10 10 ARCAS, 11 nights	2	2	Willow	\$ 1,530.10
10 13 O'Connell, 3 nights	1	1	Birdhouse	\$ 112.35
10 16 ARCAS, 6 nights	1	2	Garden	\$ 417.30
10 26 ARCAS, 12 nights	2	2	Garden	\$ 1,669.20
10 29 ARCAS, 3 nights	2	2	Willow	\$ 417.30



11 02 Omasta	2	2	Garden	\$	80.25
11 09 Omasta	2	2	Garden	\$	80.25
11 17 O'Connell, 3 nights	1	2	Garden	\$	112.35
12 21 O'Connell, 3 nights	1	2	Garden	\$	112.35
<b>Totals</b>					<u>\$ 14,839.72</u>

63. On the days not listed above, the building was empty of paying guests.
64. All the guests listed above were paying guests. Cargo Control is a business owned by Patricia Denis's brother. He was a paying guest on numerous dates as he was working in the area. Patricia Denis' sister-in-law, Myrna McDonell, stayed in August of 2001 for three days and insisted on paying.
65. All of the foregoing facts are true for the years 2001, 2002 and 2003 with the following qualifications:
- a. The Gallery Room (see number 11 on Map) was not completed until summer 2004. Prior to 2004 the space currently occupied by the Gallery Room was used as a construction shop area for the bed and breakfast business and it contained power tools such as table saws which were used to complete finishing touches such as the mouldings in the guest rooms.

- b. The wet bar was begun and completed in fall 2003. Prior to the construction of the wet bar, the space it currently occupies was open.

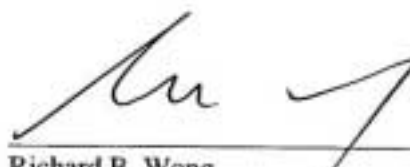
**DATED** at the City of Vancouver, the Province of British Columbia, this 15<sup>th</sup> day of October, 2007.

John H. Sims Q.C.  
Deputy Attorney General of Canada  
Solicitor for the Respondent



Per:

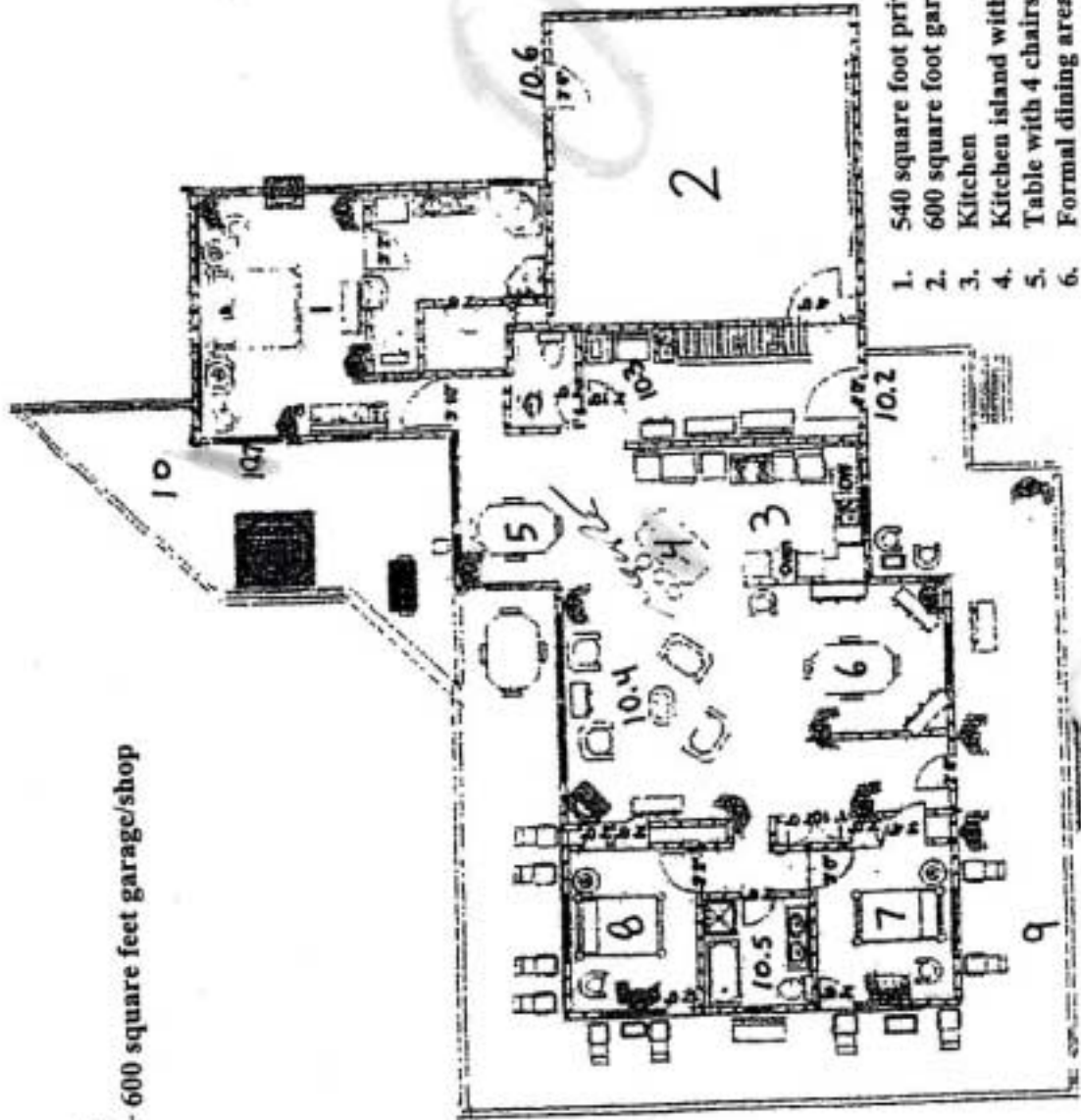
Raj Grewal  
Counsel for the Respondent



Richard B. Wong  
Counsel for the Appellants

**LEVEL 1  
TOP FLOOR**

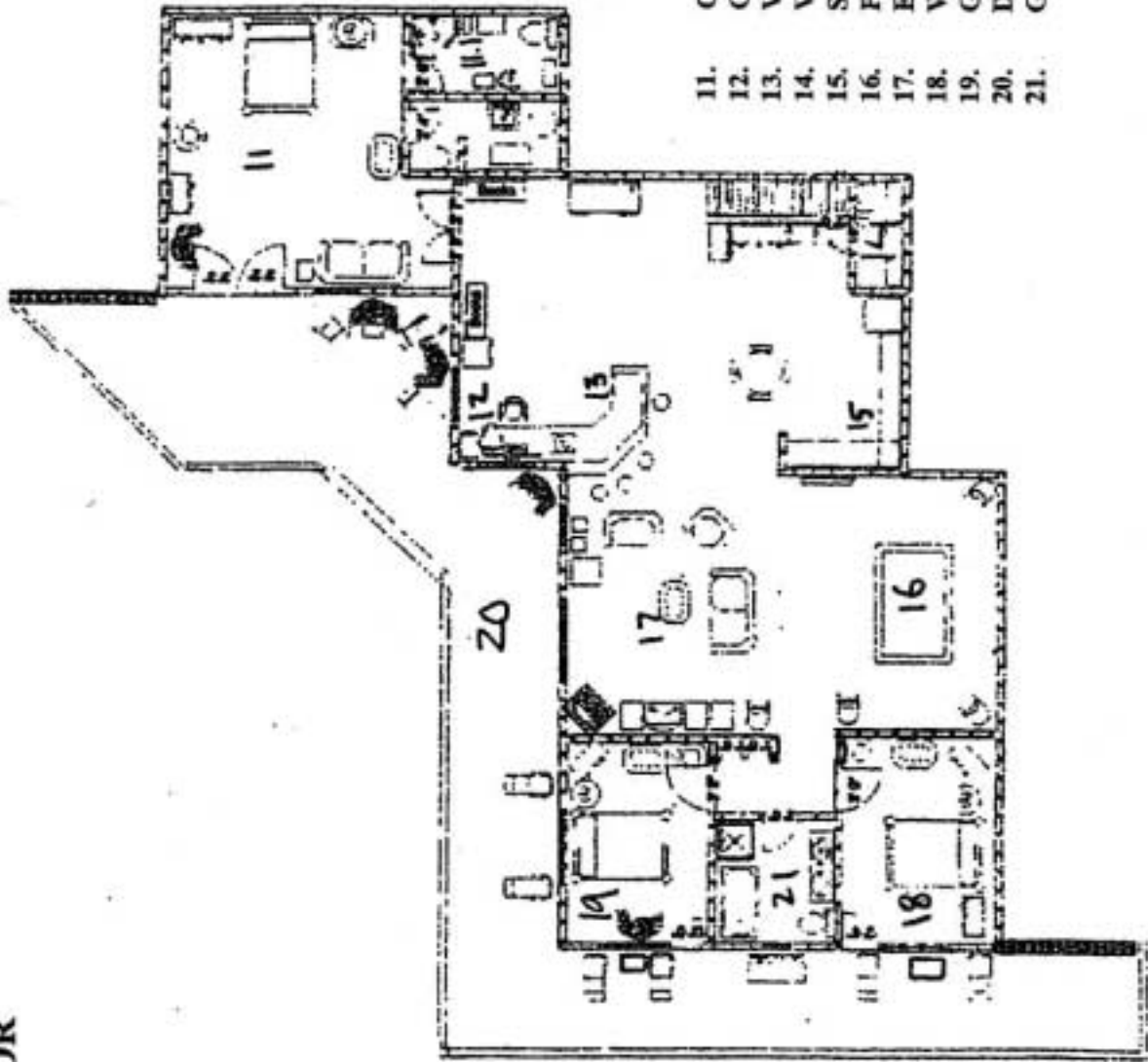
2,224 square feet + 600 square feet garage/shop



1. 540 square foot private area for owner's use
2. 600 square foot garage/shop
3. Kitchen
4. Kitchen island with stools
5. Table with 4 chairs
6. Formal dining area
7. Wicker guestroom
8. Birdhouse guestroom
9. Deck space
10. Deck space with hot tub and barbeque
- 10.1 Main entrance
- 10.2 Secondary entrance
- 10.3 Laundry facilities
- 10.4 Sitting area
- 10.5 Guest bathroom
- 10.6 Garage entrance
- 10.7 Exterior entrance to 540 square foot private area

LEVEL 2

BOTTOM FLOOR



- 11. Gallery Room with ensuite (11.1)
- 12. Computer area
- 13. Wet bar
- 14. Wine cellar
- 15. Storage cabinets
- 16. Pool table
- 17. Entertainment area
- 18. Willow room
- 19. Garden room
- 20. Deck space
- 21. Guest bathroom