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Case: 2016-4984(IT)G

BETWEEN:

CAE INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 3 and 4, 2019 and August 24 and 25, 2020 in Montréal, Québec.

Before: The Honorable Judge Sylvain Ouimet

Appearances:

Appellant's lawyers:	Mr. Wilfred Lefebvre Mr. Marc -Olivier Plante
Counsel for the Respondent:	Mr. Dany Leduc Ms. Antonia Paraherakis

JUDGEMENT

The appeal of the assessments made under the *Income Tax Act* for the 2012 and 2013 taxation years is dismissed, with costs, for the reasons attached.

Signed in Ottawa, Canada, this 14th Day of September 2021.

"Sylvain Ouimet"
Judge Ouimet

Reference: 2021 CCI 57
Date: 20211108
File: 2016-4984(IT)G

BETWEEN:

CAE INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Justice Ouimet

I. INTRODUCTION

[1] CAE Inc. ("CAE") is appealing two assessments made on December 15 and October 26, 2016, by the Minister of National Revenue (the "Minister"). These assessments relate to the 2012 and 2013 taxation years. In these assessments, the Minister concluded that the sums received by CAE under an agreement entered into with the Minister of Industry of Canada entitled "- SADI Agreement NO. 780-503924 - Strategic Aerospace and Defense Initiative - Project Falcon" ("SADI Agreement") constituted as "government assistance" within the meaning of subsection 127(9) of the Income Tax Act, RSC 1985, c.1 (5th Supp.) (" ITA"). More specifically, the Minister concluded that the amounts of $57,084,395 and $59,148,888 that CAE received or was entitled to receive under the SADI Agreement during the 2012 and 2013 taxation years respectively constituted a form of "government assistance".

[2] Having concluded that the amounts of $57,084,395 and $59,148,888 constituted a form of "government assistance" within the meaning of subsection 127(9) of the ITA, the Minister concluded that the amounts of $41,003,491 $ and $40,652,951 received by CAE under the SADI Agreement during the 2012 and 2013 taxation years and used for scientific research and

experimental development ("SR&ED") purposes were to be deducted from the number of expenditures CAE's SR&ED deductible under paragraph 37(1)(d) of the ITA for those taxation years.

[3] In addition, pursuant to subsection 127(18) of the ITA, the Minister has determined that the amounts that CAE received or was entitled to receive under the SADI Agreement during the 2012 taxation years and 2013, being $57,084,395 and $59,148,888 respectively, should be subtracted from the amount of eligible SR&ED expenditures for the purposes of CAE's investment tax credit for those taxation years.

[4] Finally, pursuant to subparagraphs 12(1)(x)(iv) and 12(1)(x)(v) of the ITA, the Minister concluded that the sum of $14,806,939, being the difference between the amount received by CAE during the 2012 taxation year under the SADI Agreement ($55,810,430) and the amount of CAE's SR&ED expenditures during that same year in relation to the agreement ($41,003,491), was to be included in computing CAE's income for the 2012 taxation year.

[5] The following persons testified for the Respondent at the hearing:

- Jean Lemieux, an employee of the Strategic Innovation Fund within the Department of Industry Canada.

- Neil de Gray, expert witness.

[6] The following persons testified for the Appellant at the hearing:

- Constantino Malatesta, Vice President Finance of CAE.

- Sylvie Brossard, vice-president of CAE's tax department.

II. THE ISSUES IN DISPUTE

[7] The issues are as follows:

1. Did the Minister correctly conclude that the sums of $57,084,395 and $59,148,888 that CAE received or was entitled to receive under the SADI Agreement over the years 2012 and 2013 tax returns, respectively, constituted “government assistance” within the meaning of subsection 127(9) of the ITA?

2. Did the Minister correctly conclude that the sums of $57,084,395 and $59,148,888 that CAE received or was entitled to receive under the SADI Agreement should be deducted from the amount of its SR&ED expenditures eligible for the purposes of calculating CAE's investment tax credit for the 2012 and 2013 taxation years respectively, pursuant to subsection 127(18) of the ITA?

3. Did the Minister correctly conclude that the sums of $41,003,491 and $40,652,951 [1] received by CAE under the SADI Agreement for the 2012 and 2013 taxation years should be subtracted from the amount of SR&ED expenditures deductible from CAE's income for the 2012 and 2013 taxation years respectively, under paragraph 37(1)(d) of the ITA?

4. Did the Minister correctly conclude that the sum of $14,806,939 should be included in the calculation of CAE's income for the 2012 taxation year under subparagraph 12(1)(x)(iv) of the ITA?

[8] Alternatively, if the Court were to conclude that the amounts received by CAE under the SADI Agreement did not constitute a form of "government assistance" within the meaning of subsection 127(9) of the ITA, the Court will have to answer to the following question:

Did amounts received by CAE under the SADI Agreement in the 2012 and 2013 taxation years respectively constitute inducement payments, reimbursements or contributions within the meaning of paragraphs 12(1)(x)(iii) and (iv) of the ITA?

III. RELEVANT LEGISLATIVE PROVISIONS

[9] The relevant statutory provisions are as follows:

Income Tax Act, RSC 1985, c. 1 (5th add.)

12 (1) There shall be included in computing a taxpayer's income from a business or property in a taxation year such of the following amounts as apply:

(x) an amount (other than a prescribed amount) received by the taxpayer in the year while earning income from a business or property:

(i) a person or partnership (referred to as a "debtor" in this paragraph) who pays the amount, as the case may be:

(A) for the purpose of earning income from a business or property,

(B) in order to obtain a benefit for itself or for persons with whom it does not deal at arm's length,

(C) in circumstances where it is reasonable to conclude that it would not have paid the amount if it had not received amounts from a debtor, government, municipality or other authorities referred to in this subparagraph or in subparagraph(ii),

(ii) a government, municipality or other authority,

if it is reasonable to consider the amount as received:

(iii) either as an incentive payment, in the form of a bonus, grant, forgivable loan, tax deduction or indemnity, or in any other form,

(iv) either as reimbursement, contribution or indemnity or as assistance, in the form of a grant, grant, conditionally repayable loan, tax deduction or indemnity, or in any other form, in respect of, as the case may be:

(A) an amount included in or deducted from the cost of the property,

(B) an expense incurred or made,

to the extent that the amount, as the case may be:

(v) has not already been included in computing the taxpayer's income or deducted in computing, for the purposes of this Act, any balance of expenses or other amounts not deducted, for the year or for a previous tax year,

(v.1) is not an amount received by the taxpayer in respect of a restrictive covenant, as defined in subsection 56.4(1), that has been included under subsection 56.4(2) in computing the taxpayer's income. a person related to the taxpayer,

(vi) subject to subsection 127(11.1), (11.5) or (11.6), does not reduce, for the purpose of an assessment made under this Act, or which may be made, the cost or capital cost of the property or the amount of the expense,

(vii) does not reduce, under subsection (2.2) or 13(7.4) or paragraph 53(2)(s), the cost or capital cost of the property or the amount of the expenditure,

(viii) cannot reasonably be regarded as a payment made in respect of the acquisition by the debtor or by the administration of an interest in the taxpayer, of an interest or, for the application of civil law, of a right in his business or an interest or, for the application of civil law, a real right in his property;

37 (1) A taxpayer carrying on a business in Canada in a taxation year may deduct in computing his income from that business for the year an amount not exceeding the excess, if any, of the total of the following amounts:

[...]

(c) the total of all amounts each of which is an expenditure incurred by the taxpayer in the year or a preceding taxation year ending after 1973 by way of reimbursement of amounts referred to in paragraph (d);

[...]

on the total of the following amounts:

(d) the total of the amounts each of which is government assistance or non-government assistance, as defined in subsection 127(9), in respect of an expenditure referred to in paragraph (a) or (b), as they apply in respect of the expenditure, that the taxpayer has received, is entitled to receive or can reasonably be expected to receive on the filing-due date applicable to him for the year;

67. In computing income, no deduction may be made in respect of an expense in respect of which an amount is otherwise deductible under this Act, except to the extent that such expense was reasonable in the circumstances.

127(9) The following definitions apply in this section.

government assistance: assistance received from a government, municipality or other administration in the form of a grant, grant, conditionally repayable loan, tax deduction or investment allowance or in any other form, excluding a deduction under subsection (5) or (6). (government assistance)

non-governmental assistance means the amount that would be included in income under paragraph 12(1)(x) if that paragraph applied but for subparagraphs (v) to (vii) thereof. (non-governmental assistance)

127 (18) Where a taxpayer — an individual or a partnership — receives, is entitled to receive or can reasonably be expected to receive, on or before the filing due date applicable to him for his taxation year, an amount that represents government assistance, non-government assistance or a contractual payment that can reasonably be regarded as relating to scientific research activities and experimental development, the excess of that amount over amounts applied for previous taxation years under this subsection or subsections (19) or (20) in respect of that amount shall be applied against the taxpayer's qualified expenditures otherwise incurred during the year that can reasonably be considered to relate to the activities of the taxpayer.

Interpretation Act, RSC 1985, c. I-21

Rules of interpretation

Property and civil rights

Bijural tradition and application of provincial law

8.1 The civil law and the common law are equally authoritative and are both sources of property and civil rights law in Canada and, if it is necessary to resort to rules, principles or concepts belonging to the field of property and civil rights in order to ensure the application of a text in a province, it is necessary, unless rule of law opposes it, to resort to the rules, principles and concepts in force in that province at the time of the application of the text.

Civil Code of Quebec, CQLR, c. CCQ-1991

BOOK FOUR - GOODS

TITLE TWO – PROPERTY

CHAPTER ONE – THE NATURE AND SCOPE OF THE RIGHT OF PROPERTY

947. Ownership is the right to use, enjoy and dispose of property freely and completely, subject to the limits and conditions of exercise set by law.

It is susceptible to modalities and dismemberments.

BOOK FIVE - OBLIGATIONS

TITLE ONE – OBLIGATIONS IN GENERAL

CHAPTER TWO – OF THE CONTRACT

SECTION IV – INTERPRETATION OF THE CONTRACT

1425. In the interpretation of the contract, one must seek what was the common intention of the parties rather than stopping at the literal meaning of the terms used.

1426. The interpretation of the contract takes into account its nature, the circumstances in which it was concluded, the interpretation that the parties have already given it or that it may have received, as well as usage.

1427. The clauses are interpreted by each other, giving each the meaning that results from the contract as a whole.

1428. A clause is understood in the sense that confers on it some effect rather than in the sense that produces none.

1429. Terms capable of two meanings must be taken in the sense that best suits the subject matter of the contract.

1430. The clause intended to remove any doubt as to the application of the contract to a particular case does not restrict the scope of the contract otherwise framed in general terms.

1431. The terms of a contract, even if stated in general terms, include only what the parties appear to have intended to contract on.

1432. In case of doubt, the contract is interpreted in favor of the person who contracted the obligation and against the person who stipulated it. In all cases, it is interpreted in favor of the member or the consumer.

TITLE TWO – NAMED CONTRACTS

CHAPTER TWELVE – OF THE LOAN

SECTION I – LOAN KINDS AND THEIR NATURE

2312. There are two kinds of loans: the ready-to-use loan and the simple loan.

2314. The simple loan is the contract by which the lender gives a certain quantity of money or other goods which are consumed by use to the borrower, who obliges himself to return as much, of the same kind and quality, after a certain time

2315. The simple loan is presumed to be made free of charge unless otherwise stipulated or it is a loan of money, in which case it is presumed made against payment

SECTION III – SIMPLE LOAN

2327. By simple lending, the borrower becomes the owner of the property lent and assumes the risk of loss upon delivery.

IV. FACTS

A. Context

[10] CAE is a Canadian company founded in 1947 and its head office is located in Ville Saint-Laurent in the province of Quebec [2]. CAE is a public company listed on the Toronto Stock Exchange [3]. CAE operates primarily in the field of manufacturing, selling and servicing flight simulators. The company also offers training sessions using flight simulators for the civil and military aviation industries. The company operates in more than 30 countries and employs approximately 9,000 employees worldwide [4].

[11] In 2007, as part of a strategic initiative aimed at the aerospace and defense industries, Canada's Minister of Industry created the Strategic Aerospace and Defense Initiative "SADI program" [5].

[12] The objectives of the SADI Program were:

1. Encourage strategic research and development leading to innovation and excellence in products, services and processes;

2. Increase the competitiveness of Canadian businesses;

3. Foster collaboration between research institutes, universities, colleges and the private sector [6].

[13] Under the SADI Program, a financial contribution to a research and development project could be granted to a company working in the aerospace, space or defense sectors [7]. The Industrial Technologies Office of the Department of Industry Canada was responsible for administering this program [8].

B. The SADI Agreement

[14] On March 30, 2009, within the framework of the SADI Program, an agreement was concluded between the Minister of Industry Canada and CAE [9]. This agreement, the SADI Agreement, was entered into with respect to CAE's SR&ED project known as “Project Falcon”. This project required SR&ED expenditures of $700,000,000 over a five-year period, from 2009 to 2014 [10]. It focused on the development of technologies related to flight simulators as well as certain products in the health field [11]. Under this agreement, Canada's Minister of Industry contributed financially to the project by making “contributions” to CAE between 2009 and 2014 inclusive. These contributions are defined in the agreement as "financial assistance" intended to fund CAE's SR&ED activities in relation to Project Falcon [12]. These contributions constituted 35% of the total “eligible expenses” [13] incurred by CAE in relation to Project Falcon and could not exceed $250,000,000 [14]. More specifically, the annual contributions that could be paid to CAE could not exceed the following amounts [15]:

Government fiscal years	Maximum contributions that can be made

2009/2010	$31,750,000
2010/2011	$53,250,000
2011/2012	$57,100,000
2012/2013	$63,000,000
2013/2014	$44,900,000
TOTAL	$250,000,000

[15] CAE received the maximum amount that could be paid to it under the SADI Agreement, namely $250,000,000.

[16] During the 2012 and 2013 taxation years, the amounts that CAE received or was entitled to receive under the SADI Agreement were $57,084,395 and $59,148,888 respectively [16]. Only a portion of these amounts was used by CAE to pay SR&ED expenses incurred in relation to Project Falcon, namely $41,003,491 in 2012 and $40,652,951 in 2013 [17].

[17] Under the SADI Agreement, repayment of contributions must be made in fifteen annual instalments. The total reimbursements correspond to the sum equivalent to the total contributions paid to CAE multiplied by a factor of 1.35. CAE having received contributions totaling $250,000,000, the total amount to be reimbursed is $337,500,000 ($250,000,000 X 1.35) [18].

[18] According to the SADI Agreement, the reimbursement of contributions is unconditional and without any security [19]. The contributions must be reimbursed according to the schedule and according to the conditions provided for in the agreement. Annual repayments must be made no later than July 31 of each year beginning in 2015, approximately six years after receipt of the first contributions. The last of the fifteen repayments must be made on July 31, 2029 [20]. Under the repayment conditions provided for in the agreement, the contributions paid to CAE implicitly provide the Canadian Minister of Industry with a rate of return of approximately 2.50% on an annual basis [21].

[19] The amounts to be reimbursed annually by CAE under the SADI Agreement are as follows [22] :

	Refunds Payment	Year
1	$11,250,000	2015
2	$11,250,000	2016

3	$11,250,000	2017
4	$11,250,000	2018
5	$22,500,000	2019
6	$22,500,000	2020
7	$22,500,000	2021
8	$22,500,000	2022
9	$22,500,000	2023
10	$22,500,000	2024
11	$33,750,000	2025
12	$33,750,000	2026
13	$33,750,000	2027
14	$33,750,000	2028
15	$33,750,000	2029
TOTAL	$337,500,000	

[20] Under the SADI Agreement, certain restrictions are imposed on CAE. For example, CAE is committed to manufacturing exclusively in Canada all products that may result from Project Falcon and certain other restrictions apply to CAE's ability to transfer title or intellectual property rights relating to the project. CAE is also required to notify the Minister of Industry Canada of any other government financial assistance requested or received in connection with the project. If such aid were to be received, the contributions receivable could be reduced [24]. In addition, to be eligible to receive funds under the SADI Program, CAE had to establish a plan to work with accredited post-secondary institutions in Canada and allocate at least 1.0% of the total eligible SR&ED of the project to these institutions [25].

[21] The SADI Agreement stipulates that meetings may be organized between the parties in order to examine the results of the SR&ED work undertaken within the framework of the Falcon Project as well as to verify whether the performance objectives of the SADI Program have been

achieved [26]. In addition, CAE must periodically submit reports to the Minister of Industry of Canada on the following subjects [27]:

1. The progress of SR&ED work on the Falcon project [28];

2. Achievements resulting from the achievement of results [29];

3. Yields of the SADI Program [30].

[22] The SADI Agreement may be terminated by CAE in the event of early repayment of all contributions received and the payment of an amount representing a return on investment of 2.75% on an annual basis with respect to the amounts repaid in advance [31].

C. Testimony of Constantino Malatesta

[23] Mr. Malatesta has been with CAE since 2006. He was appointed Vice President of Finance and Controller in 2016. During the negotiations leading to the conclusion of the SADI Agreement, Mr. Malatesta was responsible for the "Complex Accounting Group" of CAE [32]. He first pointed out that since CAE is a public company listed on the Toronto Stock Exchange and the New York Stock Exchange, its financial statements are audited by independent auditors on a quarterly basis and an audit report is produced annually [33].

[24] According to Mr. Malatesta, the SADI Program was a means for CAE to finance its SR&ED projects [34]. Mr. Malatesta's role was to give opinions on the financing and the accounting aspect of such projects, including when concluding an agreement such as the SADI Agreement [35].

[25] Mr. Malatesta testified about the circumstances surrounding the signing of the SADI Agreement. He did not participate directly in the negotiations, but he took part in the discussions of the CAE negotiation team. The people in charge of the negotiations were Nathalie Bourque for CAE and Mr. Lemieux for the Minister of Industry of Canada [37]. Negotiations leading to the signing of the agreement lasted several months.

[26] In October 2008, CAE was considering a reimbursement option under which it could repay contributions made by the government based on a percentage of earned income based on sales growth ("conditional reimbursement") [38]. This option was ultimately not chosen. CAE chose a financing option with repayment independent of sales growth, i.e., a program of payments made in the form of fixed installments ("unconditional repayment") because it concluded that it had more liquidity and that the effective interest rate incurred would be lower [39]. This aspect of the agreement was the subject of negotiations between the parties

[27] The refunds were made by CAE and, according to Mr. Malatesta, it always had the ability to make them. According to CAE's consolidated financial statements for the years 2010 and 2012,

revenues and assets were in the billions of dollars and were expected to grow year over year. Although CAE did not provide security to guarantee the repayment of contributions received, it is a public company and therefore its ability to repay could be assessed using its financial statements and other public records [43].

[28] As for the accounting treatment of the contributions received from the Minister of Industry of Canada, they have been qualified in their entirety as a long-term obligation in CAE's consolidated financial statements [44]. In order to comply with generally accepted accounting principles ("GAAP") [45], certain accounting adjustments had to be made. According to Mr. Malatesta, given the repayment conditions, the contributions received did not really reflect CAE's financial obligation to them. Therefore, the amounts received have been adjusted to reflect their actual values [47]. The amount of contributions received was reduced according to the prevailing market interest rate for financing of this type [48]. These reductions take into account the duration of the agreement, including the repayment period.

[29] CAE concluded that the effective interest rate of the SADI Agreement was approximately 2.7% [49]. CAE adjusted this rate according to the interest rate that would have been paid in the context of a comparable transaction carried out at the prevailing market interest rate, ie at its fair market value [50] The cash value of the difference between the effective interest rate and that which would have been determined in a transaction carried out at fair market value is added in the calculation of income for accounting purposes under GAAP [51]. This incremental component, together with the effective rate, constitutes the cost of financing the agreement for CAE [52].

[30] In the end, the total interest that would have been payable on a loan made at its fair market value, namely $210,475,399, was deducted as a financing expense in the financial statements [53]. The amount of $122,975,399 constituting the accretionary component was presented as income, constituting a reduction in operating costs or a reduction in capitalized expenditures. The financing cost of $210,475,399 was effectively reduced by the accretion component, reducing the interest expense in the financial statements to $87,500,000, being the amount of interest actually paid by CAE under the agreement [55].

[31] In order to determine the fair market value of the interest rate of an agreement comparable to the SADI Agreement, CAE examined the interest rate agreed between private companies for such transactions [56]. It examined the interest rate paid on bonds [57] as well as rates for other transactions where the party that was to receive funds had a credit rating similar to CAE's [58]. It chose the highest rates on the market since its agreement involved greater risk, considering that it did not provide the same guarantees and protections to the government as in similar transactions and considering that the sums to be received would be used for SR&ED activities [59].

[32] According to Mr. Malatesta, the difference between the total amount of interest payable on contributions received under the SADI Agreement and the total amount of interest that would have been payable by CAE if it had to pay interest on these contributions at the market interest rate of $122,975,399 ($210,475,399 -$87,500,000) were described as "government benefit" in CAE's financial statements.

D. Testimony of Sylvie Brossard

[33] Ms. Brossard has been with CAE since 2007. At the time of trial, she held the position of Vice President of CAE's tax department. Most of Ms. Brossard's testimony focused on the accounting treatment of contributions received by CAE under the SADI Agreement.

[34] According to Ms. Brossard's testimony, CAE did not include in its revenues the amounts received as contributions under the SADI Agreement, because CAE considered them to be amounts received under a loan agreement and not received as "government assistance ". For the same reason, these amounts were not used by CAE to reduce its eligible SR&ED expenditures [62].

[35] CAE included in its 2012 income statements a fictitious profit generated by this loan obtained at a preferential rate. CAE has also included in these same statements a fictitious interest expense corresponding to the difference between the sums paid as interest under the SADI Agreement and the sums which would have been paid as such if the loan had been granted at the market interest rate. This sum was “offset” by the addition of a non-deductible expense, thus cancelling out the fictitious profit generated by the preferential interest rate in CAE's financial statements [63].

E. Testimony of Jean Lemieux

[36] Mr. Lemieux has been with the Department of Industry Canada's Strategic Innovation Fund since 2006. He was the principal investment manager and analyst and, as such, he is the person who prepared the documents necessary for the conclusion of the SADI Agreement.

[37] According to Mr. Lemieux, the SADI Program was set up in 2007 by the Industrial Technologies Office to encourage research and development projects as well as collaboration with universities, colleges, post-secondary institutions and research institutes in such projects. The program was also intended to encourage the economic development of the aerospace, defence, space and security industry by contributing financially to research and development projects of companies working in these sectors. According to Mr. Lemieux, these sectors of activity are important for Canada and, traditionally, they have always been heavily subsidized [64].

[38] The objective of the SADI Program was not to generate a return on contributions made and the program does not have a target rate of return. However, an agreement entered into under the program could not be limited to providing for the reimbursement of contributions paid to a company. The agreement had to provide for a reasonable rate of return on "investment" in order to comply with the rules of the World Trade Organization.

[39] According to Mr. Lemieux, most of the sums received from companies under the SADI program are transferred to the government's consolidated fund. Only part of these sums is kept and included in the program budget.

[40] The SADI Program is a so-called “contribution” program, and it is for this reason, according to Mr. Lemieux, that the SADI Agreement does not qualify as a loan. In addition, the relevant government documents do not provide that a loan can be obtained under the program.

[41] The most important criteria that must be met by a company in order to benefit from the SADI Program is to be able to demonstrate that Canada will benefit from the project [67]. According to Mr. Lemieux, CAE was able to benefit from the program because it demonstrated that it was a well-established company in the flight simulator industry and that the funds obtained under the program would allow Canada and the company to maintain its leadership in this industry. In addition, the Canadian workforce would benefit from the training provided to them as a result of CAE's participation in the program and the Canadian public as well, since the use of flight simulators for training purposes is beneficial to the environment. Finally, Canadian companies collaborating with CAE would indirectly benefit from its participation in the program.

[42] Mr. Lemieux explained that under the SADI Program, a maximum contribution of 30% of the total SR&ED expenditures incurred for a project could be made. During the negotiation of the SADI Agreement, the Minister of Industry Canada offered CAE two options for the reimbursement of the contributions to be paid to it, namely a conditional refund and an unconditional refund. The option that was initially offered was a conditional repayment deal based on business sales. In order to establish the conditions for a conditional refund, a mathematical formula was used to determine a royalty rate which was then applied to the company's sales. The result of this calculation was increased by an adjustment factor which varied according to the company's income. When the company's sales increase, the adjustment factor was increased; therefore, in years when a company's sales were growing, the sums reimbursed were correspondingly greater. A company could also opt for an unconditional refund. Under this option, a fixed amount determined in advance was to be repaid annually [69]. However, it was possible to choose a repayment plan according to which the amounts reimbursed gradually increased over the years.

[43] Mr. Lemieux explained that the process leading to the conclusion of the SADI Agreement began after a request from CAE. Following this request, discussions to conclude a contribution agreement were initiated. In accordance with the SADI Application Preparation Guide, CAE submitted an initial proposal and sent it to the Department of Industry Canada in October 2008. As part of this proposal, CAE requested a total contribution constituting 35% of the SR&ED expenditures of Project Falcon. The proposed repayment plan provided for conditional repayment and a royalty rate of 0.28%. Mr. Lemieux conducted an audit to determine whether the information produced by CAE in its proposal complied with the current standards and he began a due diligence process including a risk analysis. As a result of this process, he offered two options to CAE, an option involving conditional repayment and an option involving unconditional repayment.

[44] However, the contribution reimbursement conditions presented by CAE as well as the cost-sharing ratio defined in its initial proposal did not comply with the standards established by the Department of Industry Canada. In January 2009, a second proposal was submitted by CAE,

which complied with current standards. In this proposal, CAE requested a total contribution equivalent to 30% of the SR&ED expenses incurred. The total contribution was not to exceed $250,000,000. Repayment of contributions was to be made over a period of fifteen years and the amount reimbursed by CAE was to correspond to the total amount of contributions received multiplied by a minimum adjustment factor of 1.5. The recovery factor to be used could increase according to the company's sales or according to the growth of its sales [70].

[45] Negotiations focused on the total amount of contributions to be paid as well as the period over which repayments would be staggered. The reimbursement ratio was set at 1.35 and the total amount of contributions to be paid was increased to an amount equivalent to 35% of the research and development expenses incurred [71]. In return, the Department of Industry Canada has given up some of the research activities deemed riskier. As for refunds, the ministry offered two options. In both cases, a grace period of five years was provided. The first repayment option offered was conditional and based on CAE's sales growth. Repayment of contributions was to be made over a period of eight years. As for the second option, the reimbursement of contributions was unconditional and provided for fixed sums to be reimbursed over a period of fifteen years. CAE chose the second option [74]. According to Mr. Lemieux, no guarantee or security was required from CAE because it is not usually required by the SADI Program.

[46] Mr. Lemieux testified that clause 8.17 of the agreement under which CAE can terminate the agreement prematurely by refunding the contributions received in addition to an "annual return on investment" of 2.75% has been added to CAE's request. The Minister of Industry of Canada did not oppose it even if the addition of this clause could reduce its performance in the event that CAE decides to take advantage of it [75]. As for clause 6, under which CAE was required to declare the receipt of any government assistance, it was included in the agreement because, pursuant to a Treasury Board directive, the total percentage of the government assistance that a company can receive as contributions under the SADI Program is 75% [76]. Loans made at a low-interest rate must be taken into account in this accumulation [77]. Moreover, according to this directive, contributions must be repayable to a for-profit enterprise [78]. The clause prohibiting the payment of dividends is one of the clauses usually found in all agreements entered into under the SADI Program. However, these are clauses that only apply in the event that, after verification, a company declares that it is unable to make the reimbursements provided for in the agreement or if the deadlines provided for in the agreement are not respected [79].

[47] SR&ED projects are monitored on an annual or quarterly basis depending on the level of risk associated with the project. An audit is performed as soon as a claim for reimbursement of SR&ED expenditures is filed since a report must be attached.

[48] According to Mr. Lemieux, in the event that CAE had financial difficulties, a new risk analysis would have been carried out and the conditions of the SADI Agreement would have been renegotiated [80]. It was only as a last resort that CAE would have been put in default by the Minister of Industry of Canada [81]. In some cases, the debt can be written off. If renegotiations had taken place, they would have aimed at ensuring that Canada still benefits from the agreement. During his cross-examination, Mr. Lemieux said that the government was doing this in order to protect his rights.

F. Testimony of Neil de Gray

1. The mandate of Mr. de Gray

[49] Mr. de Gray is Director of Disputes and Investigations at Duff & Phelps. Since 2010, his practice has specialized in business and title valuation, quantification of damages and corporate finance advisory services. The Respondent retained his services as an expert in corporate finance and in the valuation of debt instruments and securities. The services of Mr. de Gray have been retained to assist the Court; Mr. de Gray was asked whether, in his view, the SADI Agreement has the attributes of a "trade" and constitutes an "ordinary trade agreement". Specifically, the Respondent asked him whether, in his view, payments made pursuant to the SADI Agreement were made "in exactly the same manner and for exactly the same reasons as payments made by private companies, that is, in order to promote the interests of the payer" [86]. Mr. de Gray was aware that the parties were in disagreement as to whether the agreement constituted a loan agreement or some other type of agreement. He was not asked his opinion on this [87].

2. M. de Gray's analysis

[50] When assessing the "nature" of the SADI Agreement and seeking to determine whether this agreement possesses the attributes of a "commercial enterprise" and constitutes an "ordinary commercial agreement", Mr. de Gray reviewed the key terms of the deal, which he said are as follows:

- (a) reimbursement;
- b) SADI Agreement internal rate of return;
- (c) clauses and restrictions;
- (d) other conditions [88].

[51] Analysis of the terms of the SADI Agreement led Mr. de Gray to conclude that, in general, these terms implied a higher risk profile and therefore a return at the higher end of the range of returns offered by comparable "instruments" on the market [89]. The Court has summarized Mr. de Gray's findings on each of these conditions below.

a) Reimbursement

[52] Schedule 3 of the SADI Agreement sets out the conditions for repayment of contributions. They require full unconditional repayment of all contributions received by CAE. Repayments are to be made over a fifteen-year period beginning in 2015. Overdue amounts accrue interest at the "bank rate" plus 3%, compounded monthly. Mr. de Gray concluded that the obligation to repay

all contributions received under the agreement and accrued interest on overdue amounts is generally consistent with the terms of a “commercial agreement”.

[53] Regarding the deferral of interest and principal payments during the first five years of the SADI Agreement and the fifteen-year repayment period, Mr. de Gray believes that these two factors increase the risk of the lender relating to the agreement. According to Mr. de Gray, it is unusual for a commercial loan agreement to provide for a five-year payment deferral of interest and principal. Mr. de Gray stated that a commercial loan agreement usually requires repayment in some form over the term of the agreement, and deferral periods are usually less than five years.

b) Internal rate of return implied by the SADI Agreement

[54] Mr. de Gray found that the SADI Agreement provides the Minister of Industry of Canada with a rate of return on funds advanced to CAE. Pursuant to the agreement, CAE must reimburse the full-face value of the total amount of contributions received, plus an amount equal to this amount multiplied by a maximum factor of 0.35 over a period of fifteen years.

[55] To determine whether the SADI Agreement possesses the attributes of a "commercial enterprise" and constitutes an "ordinary commercial agreement", Mr. de Gray considered whether the "implied" rate of return of the agreement corresponded to a fair market rate of return given the risk profile of the "investment". This is an “implied” rate of return because there is no reference in the agreement to any rate of return.

[56] Based on the total contributions received by CAE ($250,000,000) and the total repayments to be made ($337,500,000), Mr. de Gray concluded that the SADI Agreement provided a return of $87,500,000. ($337,500,000-$250,000,000) [94]. Mr. de Gray established what this dollar return meant from an annual rate of return perspective. He calculated the implied rate of return based on the cash flow projections in the agreement and subsequent amendments to the agreement. He concluded that the internal rate of return implied by the agreement is approximately 2.5% [95].

[57] In order to determine whether this rate was a fair market rate for such an “investment”, Mr. de Gray considered the following:

1. The terms of the agreement and their impact on a fair market rate of return;

2. The risk-free benchmark rates of return prevailing in the market on the date the parties entered into the agreement;

3. The yield of corporate bonds in Canada and the United States for bonds of the so-called "investment grade" category during the period in question;

4. The implied rates of return associated with the issuance of corporate bonds in the aerospace and defence industries during the relevant period;

5. Implied rates of return associated with CAE's existing commercial claims to arm's length third parties;

6. The market rate of return implied by the SADI Agreement as determined by CAE and found in its financial reports [96].

Conditions of the SADI Agreement

[58] Mr. de Gray has reviewed the conditions that he believes impact the risk profile of the SADI Agreement. These conditions are as follows:

(a) average term to maturity;

(b) security;

(c) clauses and restrictions;

(d) classification;

(e) repayment terms;

(f) early repayment;

(g) fixed rate of return and interest rate.

(a) Average term to maturity

[59] Mr. de Gray considered that the SADI Agreement was for a period of twenty years, that is to say, a contribution period of five years followed by a repayment period of fifteen years. He stated that the longer the term, the greater the risk inherent in an agreement and, therefore, the higher the rate of return.

(b) Security

[60] There is no security attached to the "contributions" under the SADI Agreement. Since unsecured instruments present a higher inherent risk to the contribution provider, the rate of return applicable to these instruments is higher.

(c) Clauses and Restrictions

[61] The clauses are intended to provide protection to the lender; the risk for the lender is therefore increased if an agreement contains minimum clauses. After reviewing the SADI Agreement, Mr. de Gray concluded that the protections provided were minimal. Consequently, the required return and the risk profile of the agreement are higher.

(d) Classification

[62] According to Mr. de Gray, the SADI Agreement does not expressly address the classification of the “instrument” relative to CAE's other issued and outstanding debt “instruments”. Mr. de Gray stated that the classification of a debt "instrument" corresponds to the order of eligibility of the "instrument" or its priority over the assets of the borrowing company compared to other lenders of the company. A highly ranked debt “instrument” has a lower risk profile since the lender is more likely to receive the funds due, compared to a lender holding a lower-ranked debt instrument. Mr. de Gray concluded that since the agreement is silent on the question of classification, this increases the exposure to risk for the Minister of Industry of Canada [99].

(e) Repayment terms

[63] Mr. de Gray testified that the Minister of Industry Canada's exposure to risk is increased because the SADI Agreement provides for no reimbursement during the first five years of contribution payments and the reimbursement increases gradually over the fifteen years following this period. He stated that usually, lenders require at least the payment of interest. Thus, the rate of return on the agreement should be higher.

(f) Early repayment

[64] The SADI Agreement allows CAE to prematurely terminate the agreement and prepay all amounts due, in addition to a premium of 2.75%. According to Mr. de Gray, this option is generally advantageous for the beneficiary of the capital. Furthermore, the option is disadvantageous for the funder because it reduces its ability to predict the level of its future liquidity. Therefore, financial instruments with prepayment options show higher rates of return [101].

(g) Fixed rate of return and interest rate

[65] The rate of return provided for in the SADI Agreement is fixed. It remains the same for the duration of the agreement, regardless of the market interest rate. Therefore, fixed rates are superior to variable or floating rates since the lender, under a fixed agreement, is exposed to fluctuations in market rates during the term of the agreement.

<u>Risk-free benchmark rate of return prevailing in the market on the date the parties entered into the agreement</u>

[66] According to Mr. de Gray, the risk-free rate is the theoretical rate of return that an investor would expect from a risk-free investment over a given period. The risk-free rate corresponds to a base rate or a guaranteed floor rate. Therefore, the rate of return of a given instrument must be accompanied by a premium in order to compensate for the increase in the risk profile. In practice, the yield on Canadian government and US government bonds is considered by many to be an indication of a risk-free rate in Canada and the United States, respectively.

[67] Since the approximate duration of the SADI Agreement was 20 years, Mr. de Gray examined the risk-free rate of return on 20-year bonds measured by the Canadian government and the United States Treasury [104]. Mr. de Gray compared the rate of return implied by the SADI Agreement to the risk-free rates of return for the period from March 31, 2007, to March 31, 2014; he concluded that the rate of return implied by the agreement (2.50%) was approximately 1.15% lower than the risk-free rate of return (3.65%) in Canada as of March 30, 2009. Based on this observation, he concluded that given the higher risk profile of the SADI Agreement compared to risk-free government bonds, the SADI Arrangement should have resulted in a higher rate of return than the risk-free rate[105].

The yield of corporate bonds accessible in Canada and the United States for investment-grade premium bonds

[68] Mr. de Gray examined the rate of return on BBB-rated Canadian corporate bonds with terms to maturity similar to those of the SADI Agreement, over the period from 2008 to 2014. According to Mr. de Gray, corporate bonds with a rating of BBB or higher are generally considered to be investment grade, that is, very good quality.

[69] On March 30, 2009, he concluded that the rate of return on Canadian corporate bonds with a level of risk comparable to that of CAE and with a maturity of 20 years was approximately 8.54%. Given CAE's risk profile, this led Mr. de Gray to conclude that he expected the rate of return on the SADI Agreement to exceed 8.54% [106].

Implied rates of return associated with the issuance of corporate bonds in the aerospace and defence industries during the period in question

[70] Mr. de Gray noted that from 2007 to 2014, several companies within the aerospace and defence industries had issued corporate unsecured bonds with maturities ranging from ten to thirty years. The yield on bonds rated A to BB+ during the period ranged from 2.5% to 7.75%, with an average yield of 5.13%.

[71] Looking in particular at CAE's internal credit benchmarking analysis, Mr. de Gray concluded that the rate of return on the SADI Agreement is lower than the market rate of return on the bonds of the aerospace and defence. He concluded that the agreement's rate of return is significantly lower than the market rate of return [107].

Implied rates of return associated with CAE's existing arm's length third party trade receivable

[72] Mr. de Gray stated that the interest rate implied by CAE's existing commercial debt agreements with arm's length third parties is a market rate of return indicator for the SADI Agreement. Mr. de Gray noted in the notes to CAE's annual reports that CAE was party to several loan agreements during the period from 2008 to 2014. Mr. de Gray found particularly interesting the sum of $120,000,000 US dollars raised by CAE in 2010 through a private placement. It was an unsecured investment with an average term to maturity of 8.5 years and a combined interest rate of 7.15% with interest payable semi-annually. Given the proximity of the date of issue of the private placement and that of the conclusion of the SADI Agreement,

[73] According to Mr. de Gray, the rate of return on the SADI Agreement should have been higher than the rate of 7.15% on the private placement, given the following elements:

1. The agreement had a longer term than the private placement, ie fifteen to twenty years instead of eight years;

2. The private placement benefited from a preferential ranking (priority claim);

3. The agreement was accompanied by minimal clauses compared to the private placement;

4. The agreement included deferred repayment conditions.

<u>The implied market rate of return associated with CAE's financial reports regarding the SADI Agreement</u>

[74] According to Mr. de Gray, CAE's audited annual consolidated financial statements, together with the information presented in the appendix, provide a better understanding of CAE's management's assessment of a fair rate of return of the market for the SADI Agreement.

[75] For financial statement purposes, CAE has adjusted the face value of contributions received under the SADI Agreement to their fair market value. CAE has retained, for the obligations of the SADI agreement, a fair market rate of return ranging from 6% for contributions received in 2014 to 13% for contributions received in 2010. The calculated implicit weighted cumulative market rate of return by Mr. de Gray was 10.1% at the end of the 2014 financial year [108]. According to CAE's documents, the obligations of the agreement (contributions to be repaid) aligned with the upper range of market benchmarks.

[76] For example, contributions received by CAE, totalling $33,805,358 for the fiscal year of 2010, have been discounted to represent an obligation of $9,125,957 on CAE's financial statements. CAE then assumed a fair market rate of return of 13% for contributions made in the fiscal year of 2010. Throughout the period in which contributions were made, CAE discounted the total amount of its obligation, thereby increasing it from $250,000,000 to $139,095,006.

c) Clauses and restrictions

[77] Mr. de Gray testified that commercial agreements are generally subject to several protective clauses and restrictions which protect the interests of the funder. These include financial covenants which are specific operating performance measures or ratios used to monitor the borrower's business and assess its ability to repay. They are also positive covenants requiring the business to perform certain activities or continue to abide by certain regulations and certain covenants that limit the activities of the borrower and establish limits for the business [112].

[78] Mr. de Gray concluded that the SADI Agreement contains certain protective clauses and restrictions, but fewer in number compared to a normal commercial agreement. Moreover, it does not contain precise financial clauses. Consequently, he considers that the Minister of Industry of Canada assumes, with the agreement, a higher risk than a usual commercial lender [113].

d) Other conditions

[79] According to Mr. de Gray, the SADI Agreement contains a number of restrictions limiting CAE's ability to dispose of any intellectual property or equipment developed using funds obtained under the agreement. The agreement also limits the amount of work and costs that can be incurred outside of Canada. According to Mr. de Gray, these restrictions illustrate the political and national objectives of the Government of Canada and are unusual in an ordinary trade agreement. [114]. Mr. de Gray added that there are also political reasons for the responsibilities for communicating with the public which are set out in Annex 4 of the agreement, and which cover the publication of information and marketing materials. These liabilities are not common in ordinary business arrangements. Finally, Mr. de Gray stated that it was also unusual in ordinary business arrangements for the recipient (in this case, CAE) to be required to enter into partnerships with certain arm's length parties and not-for-profit organizations in order to qualify for funding under an agreement.

3. Conclusion of M. de Gray

[80] Mr. de Gray concludes that the SADI Agreement does not possess the attributes of a “commercial enterprise” and does not constitute an “ordinary commercial agreement”. Accordingly, he also concludes that the payments made to CAE pursuant to the agreement were not made in exactly the same way and for exactly the same reasons as the payments made by private companies, that is, in order to promote the interests of the payer.

[81] Mr. de Gray came to this conclusion after establishing that a "financial instrument" such as the SADI Agreement, given its risk profile, offered a rate of return that was too low compared to what a “normal investor” would expect to get from this type of “investment”. More specifically, he drew the following three conclusions:

1. The rate of return of approximately 2.5% assumed by the agreement is significantly lower than the fair market rate of return for a financial instrument whose risk profile is comparable to that of the agreement [119].

2. The agreement is subject to minimal positive and restrictive clauses and does not contain any of the financial clauses which would be characteristic of this type of ordinary commercial agreement.

3. The Agreement contains several other conditions that are not typical of an ordinary business agreement. These conditions are primarily motivated by political considerations or government action, rather than commercial reasons.

V. POSITIONS OF THE PARTIES

A. Appellant's Position

[82] The Appellant submits that the amounts of $57,084,395 and $59,148,888 received by CAE under the SADI Agreement during the 2012 and 2013 taxation years respectively do not constitute "government assistance" in the meaning of subsection 127(9) of the ITA [122].

[83] According to the appellant, paragraph 12(1)(x) and subsection 127(18) of the ITA apply when a taxpayer obtains "government assistance" within the meaning of subsection 127(9) of the ITA. However, since these provisions refer to the expression “amount received”, they can only apply if an amount has been “received” as “government assistance”.

[84] The appellant submits that the amount that was “received” by CAE is the sum of $250,000,000. According to the appellant, in order to determine whether an amount of “government assistance” was “received”, it is necessary to characterize the agreement. The appellant maintained that the SADI Agreement constitutes a simple loan since, under it, the Department of Industry of Canada lent a sum of $250,000,000 to CAE over a period of five years and that CAE, for its part, undertook to reimburse this sum unconditionally [123].

[85] The appellant maintains that the definition of a simple loan is found in article 2314 CCQ and that, according to this definition, a loan is a contract by which the lender remits a certain amount of money or other goods that are consumed by use to a borrower. The borrower undertakes for his part to return the same, of the same species and quality, after a certain period of time. According to the appellant, the SADI Agreement clearly establishes a “lender-borrower” relationship between the Minister of Industry of Canada and CAE and the agreement was entered into in accordance with normal business practices for commercial loans. More specifically, the agreement contains clauses in the event of late repayments and in the event of default in repayment.

[86] The appellant submits that the definition of "government assistance" in subsection 127(9) of the ITA and the wording of subsection 127(18) of the ITA imposes a condition in order to

qualify a payment made under a “government assistance” agreement; the amount must have been received by a taxpayer. According to the appellant, this is the case here because the expression “assistance received” is found in subsection 127(9) and the expression “amount received” in subsection 127(18). Finally, the appellant argues that, since the legislator used the verb “receive”, there must be a transfer of ownership for an amount to have been “received” within the meaning of these provisions.

[87] The appellant submits that, under the application of the ITA, the lender does not transfer ownership of the money lent to the borrower. In support of its position, the appellant cited the following authorities: *Dunkelman c. MNR.* [124] and *Fonthill Lumber Ltd. vs. R.* [125]. According to the appellant, there is no transfer of ownership in a loan because the lender will eventually be reimbursed. For these reasons, the amounts paid to CAE under the SADI Agreement were not received as “government assistance”.

[88] Finally, the appellant submits that the monetary value of the difference between the interest rate implicit in the SADI Agreement and the market interest rate for a similar loan cannot constitute "government assistance" as no amount was received by CAE as a result. The appellant submits that this question was not, however, referred to this Court and therefore did not wish to make any further submissions on this point, even though the Court gave it the opportunity to do so.

B. Respondent's position

[89] The Respondent submits that the sum of $250,000,000 received by CAE under the SADI Agreement was received as “government assistance” within the meaning of subsection 127(9) of the ITA. Consequently, CAE had to subtract in the calculation of its deductible SR&ED expenditures the amounts of $41,003,491 and $40,652,951 during its 2012 and 2013 taxation years respectively, pursuant to paragraph 37 (1)(d) of the ITA.

[90] For the same reason, but according to subsection 127(18) of the ITA, CAE had to subtract in the calculation of its eligible SR&ED expenditures for the purposes of calculating the investment tax credit the sums of 57,084,395 $ and $59,148,888, as they were received or were to be received under the agreement during the said taxation years.

[91] Finally, the Respondent argues that the amount of $14,806,945, being the difference between the amount received or receivable by CAE during its 2012 taxation year ($55,810,430) and the amount actually received in that year ($41,003,491) was required to be included in CAE's income under subparagraph 12(1)(x)(iv) of the ITA.

[92] According to the respondent, the provisions of the ITA are intended to provide tax incentives to businesses on the net costs relating to the performance of SR&ED work in Canada. The provisions at issue restrict access to tax relief for SR&ED expenditures and investment tax credits. On this point, the respondent's position is essentially the same as that defended by the Attorney General of Canada in the Immuno-vaccine case. Subsection 37(1) of the ITA lists

deductible SR&ED expenditures. The elements listed in paragraphs 37(1)(a) to 37(1)(c.3) of the ITA increase the expense account and those listed in paragraphs 37(1)(d) to 37(1)(h) decrease it. Government assistance reduces, under paragraph 37(1)(d) of the ITA, the pool of deductible SR&ED expenditures if it relates to an SR&ED expenditure of the taxpayer carrying on business in Canada during a tax year. When amounts received as government assistance and used for SR&ED purposes must be repaid, it will be possible to deduct these amounts from the taxpayer's income, once they have been reimbursed under paragraph 37(1) (c) of the ITA.

[93] With respect to the investment tax credit, according to subsection 127(18) of the ITA, government assistance received or receivable by the taxpayer relating to SR&ED activities must be deducted in the calculation of SR&ED expenditures eligible for the calculation of its investment tax credit. As for subsection 127(10.7) of the ITA, it specifies that the amount of assistance that is reimbursed may be added to the investment tax credit in the year in which it is reimbursed. Where the amount of assistance exceeds the amount of SR&ED expenditures relating to a particular project, the excess must be added to income in the tax year under paragraph 12(1)(x) of the ITA.

[94] The respondent is of the view that, given the legislative framework in which these provisions form part, it is clear that repayable government contributions can still constitute “government assistance”. The Respondent maintains that it is not necessary to characterize the agreement. The definition of “government assistance” does not require determining the legal classification of the arrangement under which the payments are made. This definition does not exclude any type of contract and lists in a non-exhaustive way different categories of aid.

[95] According to the respondent, in the Immuno-vaccine [127] decision, the Federal Court of Appeal specified that a broad meaning must be given to the expression “government assistance”. Relying on paragraph 15 of that judgment, the respondent argues that “government assistance” may arise from agreements in which the sums paid must be reimbursed and in which the reimbursement includes a performance component.

[96] The respondent submits that, according to the test set out in *CCLC Technologie* [128], the question that must be answered in order to determine whether a payment made by a government agency was made as "government assistance" is this: was the agreement concluded "in exactly the same way and for exactly the same reasons as the payments made by the private companies", that is to say in order to promote the interests of the payer? According to the respondent, agreements of this type qualified by the case law as "ordinary commercial agreements" cover payments made by a public body under agreements entered into in the course of carrying on a business. They also apply to payments made under agreements entered into to acquire goods and services that are incidental to the activities of a public body. These categories of payments are therefore excluded from the meaning of the word “aid”.

[97] According to the respondent, since Mr. de Gray concluded that the SADI Agreement is not an ordinary commercial agreement, the Minister of Industry of Canada did not act "in exactly the same way and for exactly the same reasons as private companies”, i.e. to protect its commercial interests. Rather, it sought to promote the interests of companies operating in an important sector

of Canadian industry, including those of CAE. Consequently, the contributions paid under the agreement can be qualified as “government assistance”.

[98] The respondent maintains that several elements demonstrate that the objective of the SADI Agreement was to promote a sector of activity important to Canada and not to advance the commercial interests of the Minister of Industry of Canada. It is clear from the objectives of the SADI Program that it was designed to encourage strategic SR&ED and encourage innovation and business excellence in the field of aerospace and defence in Canada; encourage strategic SR&ED work leading to innovation and excellence; increase the competitiveness of Canadian businesses; promote collaboration between research institutes, universities, colleges, and the private sector [129]. In addition, Canada's Minister of Industry reviews proposals on the basis of potential benefits to Canada, including technological, social, and economic benefits, [130] including job creation in Canada, training of work, collaboration with universities, colleges and research institutes, the performance of the work exclusively or substantially in Canada and in Canadian facilities. According to the respondent, these objectives clearly reflect the government's desire to promote a government policy of a social and economic nature and not its own financial interests.

[99] As for the internal rates of return of the SADI Agreement, they can be explained as follows: on the one hand, the terms and conditions of the program require that the recipient of the contributions repay a sum greater than the contribution paid; on the other hand, the government asks for a return on investment in order to reduce the risk that the assistance given to companies will be considered as not in conformity with the rules of the World Trade Organization.

[100] If the Court were to conclude that the amounts paid to CAE under the SADI Agreement do not qualify as “government assistance”, these amounts (all contributions) would still have to be taxed under paragraph 12 (1)(x) of the ITA as reimbursement or contribution [131]. On the one hand, the amounts paid are clearly defined as being contributions. In addition, these contributions are paid as reimbursement of expenses incurred by CAE in connection with the Falcon project. All contributions received by the appellant during its taxation years ended March 31, 2012, and 2013 must therefore be included in the calculation of its income for each of those years pursuant to section 12 of the ITA, to the extent that the inclusion of an amount does not increase the tax currently in question.

[101] Finally, like the appellant, the respondent argues that the question of whether the monetary value of the difference between the interest rate implicit in the SADI Agreement and the market interest rate for a similar loan may constitute "government assistance" was not submitted to the Court. The respondent also said that it did not wish to make further submissions on this point, even though the Court gave it the opportunity to do so.

VI. DISCUSSION

[102] In order to answer the issues in dispute, the Court must determine whether the payments made to CAE under the SADI Agreement constitute “government assistance” under subsection 127(9) of the ITA.

[103] It is first necessary to examine the various forms that “government assistance” may take under subsection 127(9) of the ITA in order to determine whether it may take the form of payments made to CAE under the SADI Agreement. Next, the Court will examine the test established by case law to determine whether payments made by a government, municipality or other authority constitute “government assistance” under subsection 127(9) of the ITA. Finally, the Court will determine whether the payments totalling $250,000,000 made to CAE under the SADI Agreement constitute “government assistance” under this provision.

> A. The different forms that assistance received from a government, municipality or other authority can take under subsection 127(9) of the ITA.

[104] The term “government assistance” is defined in subsection 127(9) of the ITA as follows:

> "government assistance" means assistance received from a government, municipality or other authority in the form of a grant, grant, conditionally repayable loan, tax deduction or investment allowance or in any other form, the exclusion of a deduction under subsection (5) or (6).
>
> [I underline.]

[105] This definition is clear. Under it and given the use of the expression "in any other form", assistance received from a government, municipality or other administration may take any form, excluding deductions under subsections 127(5) and (6) of the ITA. The list of forms of assistance in subsection 127(9) of the ITA is therefore not exhaustive and the forms of assistance listed are only examples. Moreover, our Court decided in *Immuno-vaccine Technologies Inc. c. R.* [132], that a repayable contribution to research projects paid by a government agency could constitute "government assistance" under subsection 127(9) of the ITA, although this form of assistance is not specifically mentioned in this provision [133].

[106] This interpretation giving a broad meaning to the expression “government assistance” was adopted by the Federal Court of Appeal of Canada (“Federal Court of Appeal”) when the judgment *Immuno-vaccine Technologies Inc. c. R.* [134] was appealed. In its decision, the Federal Court of Appeal said in this regard:

> It should be noted that the expression “assistance received from a government” precedes an enumeration: bonus, subsidy, loan with conditional repayment, tax deduction, investment allowance. However, the phrase “or in any other form” immediately follows this enumeration. Contrary to the appellant's assertion — and as the judge concluded in paragraph 45 of her reasons — such an expression does not limit the form of assistance referred to in subsection 127(9). Rather, it gives a broad meaning to the word “assistance”, encompassing various forms of government assistance that are not necessarily part of the said enumeration. Therefore, this definition can include agreements that are not purely gratuitous and unilateral [135].

[I underline.]

[107] Therefore, pursuant to subsection 127(9) of the ITA, it is possible that payments made to CAE under the SADI Agreement may constitute “government assistance”.

B. The test established by the jurisprudence to determine whether a payment made by a government, a municipality or another authority constitutes "government assistance" under subsection 127(9) of the ITA.

[108] To determine whether a payment constitutes "government assistance" under subsection 127(9) of the ITA, the Court must apply the test set out in the Federal Court Appeal Division in *Consumers' Gas Co. v. R.* [136] (“Consumers' Gas”) and repeated by the Federal Court of Appeal in *Canada v. CCLC Technologies Inc*. [137] (“CCLC Technologies”) and *Immuno-vaccine Technologies Inc. v. R*. [138] (“ Immuno-vaccine ”). The test established by these judgments is as follows: whether payments have been made in exactly the same way and for exactly the same reasons as those made by private companies, i.e. in order to promote the interests of the payer, it is not "governmental assistance" within the meaning of paragraph 127(9) of the ITA.

[109] However, it is worth examining these judgments in more detail in order to identify how this test was applied.

[110] In *Consumers' Gas*, the Court was called upon to rule on the application of subsection 13(7.1) of an old version of the Income Tax Act. The taxpayer was a public natural gas distribution company in the province of Ontario which distributed natural gas by means of pipelines which followed the course of streets and roads. Various agencies, including public authorities, occasionally required the Company to relocate portions of its pipeline system to undertake construction work. In these cases, the company tried to recover the full cost of relocating the pipelines from the organization that had requested it, particularly when it involved public authorities [139].

[111] In this case, it was clear that the reimbursements made to *Consumers' Gas* did not constitute a form of government assistance, because these payments were made in exactly the same way and for exactly the same reasons as those made by private companies, i.e. in order to promote the interests of the payer. These payments had been made pursuant to an ordinary commercial arrangement. The relevant passage from that judgment is as follows:

> In my opinion, the key word in this text is “aid”, which, in this case, clearly includes the notion of grant or subsidy. In this case, it is clear from the evidence that the payments made to Consumers' Gas by public bodies such as municipalities, Ontario Hydro, and the like, were made in exactly the same way and for exactly the same reasons that payments made by private companies. i.e. in order to promote the interests of the payer ... [140]

[I underline.]

[112] In the same case, the Court also relied on certain observations made in *Ottawa Valley Power Co. c. MRN* [141] ("Ottawa Valley") in order to find that payments made under an ordinary commercial agreement entered into for commercial purposes could not be characterized as "government assistance". These observations are as follows:

> This rule appears to cover the case where a taxpayer has acquired property for a capital cost and has also received a grant, subsidy or other assistance from a public authority "in respect of or for the purpose of acquiring property", in which case the capital cost is deemed to be "the amount that such property cost the taxpayer capital less ... the amount of the grant, subsidy or other assistance". It does not appear that this rule can apply where a public authority has actually granted capital assets to a taxpayer for the purposes of his business at no cost to him. Notwithstanding the fact that the rule thus interpreted does not apply in the present case, I do not think that it can apply to ordinary commercial transactions between a public authority and a taxpayer, in the case where the public authority is dealing and deals with an individual in the same way as any other person carrying on such a business would. I do not think that the words used in paragraph (h) — "a grant, subsidy or other assistance from a public authority" — can be applied to an ordinary commercial agreement entered into between the two parties to the agreement for commercial reasons. If the Legislature were to use Ontario Hydro to carry out some legislative project to grant grants to encourage businessmen to enter into certain types of business, then it would be easy for me to apply the (h) to the grants in question. Here, however, it seems to me, that the legislature has simply authorized Ontario Hydro to do certain things deemed conducive to the success of certain changes in its methods of operation; what Ontario Hydro was thus authorized to do was of the same nature as others carrying on a similar business and compelled to make similar changes might see fit to do. [142]
>
> [I underline.]

[113] In *CCLC Technologie and Immuno-vaccine*, the Federal Court of Appeal ruled on the meaning to be given to the expression "government assistance" in subsection 127(9) of the ITA. In *Immuno-vaccine*, the Court adopted the test that a payment constitutes "government assistance" if it was not made in exactly the same manner and for exactly the same reasons as a payment made by a private company, i.e. in order to promote the interests of the payer.

[114] The relevant passage from *CCLC Technologie* is as follows:

> This appeal raises two issues.
>
> (1) Do the amounts paid by the Government of Alberta to the Respondent constitute a form of "assistance" paid in the form of a bonus, grant, forgivable loan, tax deduction, investment allowance or in any other form... within the meaning of subparagraph 12(1)(x)(iv) of the Income Tax Act, in which income is defined, and within the meaning of subsections 127(11.1) and 127(9) in which investment tax credits are defined?

(2) If the answer to the first question is yes, should not these amounts nevertheless be excluded from income under subparagraph 12(1)(x)(viii) because they are a payment made in respect of the acquisition by the debtor [...] of a right over the taxpayer, in his business or in his property [...]? With respect to the first question, we are of the opinion that the sums paid to the respondent constitute a form of government assistance. In *The Queen v. Consumers Gas Company Ltd*., the Court contrasted "government assistance" with payments made by public bodies.

> in exactly the same way and for exactly the same reasons as payments made by private companies, i.e. to promote the interests of the payer.

In this context, it is clear that the Court was dealing with payments made to promote the commercial interests of the payer.

3 The Agreement, in our opinion, does not constitute an ordinary commercial agreement between the parties. The Government of Alberta has committed to providing the technology and paying the respondent funds. Although the government obtained an interest in the short term, it would have been obliged, if the project had proved commercially viable, to sell its interest to the respondent for a consideration equivalent simply to the amount of its financial contribution, plus the related interest costs. If the project turned out to have no commercial value, as it did during the period in question, the government was entitled to nothing except a stake in technology that had no current commercial value. We believe that it is impossible to characterize this agreement as an ordinary commercial agreement. Whatever the value of the deal, from the perspective of Alberta public policy, it does not constitute an agreement that a company would agree to enter into to promote its commercial interests. A company that invests funds in projects and agrees to get no net profit if the project is successful and only gets a stake if the company has no commercial value would not survive long [143].

[I underline.]

[115] The relevant passage from the *Immuno-vaccine* judgment is as follows:

> 10 In *Canada v. CCLC Technologies Inc*., [1996] ACF no 1226 (QL), 1996 CanLII 11571 (*CCLC Technologies*), this Court adopted a test to determine whether payments made by a public authority similar to APECA pursuant to an agreement have the characteristics of a commercial enterprise. In other words, the key question is: is the public authority in question acting in a commercial capacity rather than a governmental one?
>
> 11 The judge referred to the test set out in *CCLC Technologies* and applied it to determine whether the government agency acted "in exactly the same way and for exactly the same reasons as the payments made by private companies, that is, in order to further the [business] interests of the payer" (para. 46 of the judge's reasons).

[I underline.]

[116] Having read *Consumers' Gas, CCLC Technologies and Immuno-vaccine*, I am of the opinion that in order to determine whether payments made under an agreement constitute "government assistance", it is not enough to determine whether payments were made in exactly the same way and for exactly the same reasons as those made by private companies. Rather, I am of the opinion that in order to determine whether the test established by these judgments is met, the Court must determine whether the payments were made in order to promote the commercial interests of the payer, that is to say, whether they were made under an "ordinary commercial arrangement" [145]. Indeed, I believe that an agreement can be an "ordinary commercial agreement" even if the payments made under it were not made in exactly the same way and for exactly the same reasons as those made by private companies. Given the circumstances, a company may very well determine that it is appropriate for it, in the interest of furthering its commercial interests, to enter into an agreement whose terms differ from comparable agreements entered into between private companies during the same period. Finally, I also believe that since payments made under an agreement are made in accordance with its terms, it is appropriate to examine such terms to determine whether they correspond to the terms of an ordinary commercial agreement and, if necessary, to make a comparative analysis [146]. In this regard, it is logical to conclude, unless there is evidence to the contrary, that it is generally contrary to the commercial interests of a company to be a party to an agreement whose terms are substantially less advantageous than those of agreements ordinarily concluded under the same circumstances.

C. Is the SADI Agreement an "ordinary commercial agreement"?

[117] Reading the SADI Agreement and taking into account the circumstances, it is not possible to determine whether or not it is an "ordinary commercial agreement". The facts show that by entering into the SADI Agreement, the Government of Canada wanted to help a sector of activity important to Canada and not to advance its commercial interests. This does not allow the Court to conclude that the SADI Agreement is not an ordinary commercial agreement. As mentioned previously, in order to make this determination, I am of the opinion that the Court must compare the terms of the SADI Agreement to those of commercial agreements that were entered into by private companies at the same time in order to obtain financing for $250,000,000. For this purpose, it is necessary to qualify the agreement. Once the agreement has been qualified, the Court will be able to identify the main conditions of this type of agreement for comparison purposes and thus be able to determine whether it is an "ordinary business arrangement". It is therefore necessary to carry out a comparative analysis.

1. Qualification of the SADI Agreement

[118] The SADI Agreement was not expressly qualified by the parties. The respondent maintains that this is a contribution agreement aimed at granting financial assistance to a research and development project. The appellant argues that it is a simple loan within the meaning of article 2314 of the C.c.Q. The agreement does refer to "contributions", but that is not determinative in itself. During his testimony, Mr. Lemieux described these contributions as "investment", but

again, this is not decisive. A “contribution” to research and development work can take different forms, as can an investment in a company.

[119] In this case, it is necessary to have recourse to the civil law in force in Quebec in order to characterize the SADI Agreement. In fact, under the terms of section 8.1 of the *Interpretation Act* [147], in order to ensure the application of the ITA in the province of Quebec, when it is necessary to have recourse to rules, principles or concepts belonging to the field of property and civil rights, the Court must have recourse to the rules, principles and concepts in force in Quebec [148].

[120] Can the SADI Agreement be characterized as a loan, as the appellant maintains? A simple loan is defined by article 2314 of the Civil Code of Quebec as follows:

> 2314 A simple loan is a contract by which the lender delivers a certain quantity of money or other goods which are consumed by use to the borrower, who undertakes to return the same amount to him, of the same kind and same quality.

[121] According to civil law, when the judge must qualify an agreement, he must look for the legal transaction envisaged by the parties. This can be done by determining what the objective of the parties was when entering into the agreement or, more frequently, by determining what is the essential benefit that is at the heart of the agreement. An examination of the obligations and other effects of the agreement may also be useful or necessary in order to qualify the agreement. When qualifying the agreement, the elements extrinsic to it, such as the circumstances surrounding its formation and its application by the parties, are facts to which the judge may refer, but only when the agreement is ambiguous. [151]. It should be noted that the judge is never bound by the qualification given to the agreement by the parties [152].

[122] The essential services of the parties to the SADI Agreement are easily identifiable. For the Minister of Industry of Canada, this involves making a maximum total contribution of $250,000,000 to CAE over a 5-year period, from 2009 to 2015, according to the conditions set out in the agreement. As for CAE's essential service, it involves reimbursing the contributions received according to the conditions and schedule set out in the agreement.

[123] It appears that the essential services of the parties to the SADI Agreement correspond to the two conditions that must be met for an agreement to be qualified as a loan: According to article 2314 CCQ either the remittance of a certain amount of money from one party to another and the obligation for the party who received it to return it in the same kind and quality. Under the agreement, Canada's Minister of Industry provided CAE with $250,000,000. Therefore, the first condition is met. Also under the agreement, CAE was to remit $337,500,000 to the Minister of Industry Canada. Therefore, the second condition is met. Since the two conditions set out in article 2314 CCQ. met, the Court concludes that the arrangement is a loan.

2. Mr. de Gray's expert report

[124] In order to demonstrate to the Court that the SADI Agreement is not an “ordinary commercial agreement”, the Respondent called Mr. de Gray to testify. Most of the Respondent's arguments on this point are based on the content of its expert report. This expert report was entered into evidence at the trial. For its part, the appellant did not produce either an expert report or a second report.

1. Qualifications of Mr. de Gray as an expert

[125] The respondent asked the Court to recognize Mr. de Gray as an expert in corporate finance. More specifically, it requested that Mr. de Gray be recognized as an expert in the valuation of debt instruments and equity securities. The Court accepted this request. This decision is based on the following facts subject to the Court's assessment:

- Throughout his career, Mr. de Gray has authored or co-authored articles on business valuation principles. He has been writing expert reports for more than ten years, many of which have been presented in court.

- Mr. de Gray studied at the Rotman School of Management at the University of Toronto, where he obtained his Bachelor of Commerce.

- He obtained his Chartered Accountant designation after a three-year internship with Ernst & Young.

- He obtained his Chartered Business Valuator designation in 2012.

- He obtained a certificate in forensic accounting from the American Institute of CPAs in 2017.

- Currently, he is Director of Disputes and Investigations at Duff & Phelps. This department is responsible for analyzing appraisals, expert reports, damage quantification analysis and financial loss reports.

[126] The appellant did not object to the qualification of Mr. de Gray as an expert.

2. Mr. de Gray's task and the question before the Court

[127] The respondent asked Mr. de Gray the following question: Were the payments made under the SADI Agreement made in exactly the same way and for exactly the same reasons as the payments made by private companies, i.e. in order to promote the [commercial] interests of the payer? Mr. de Gray's report deals with this issue. In order to answer this question, Mr. de Gray first determined whether the agreement constituted an “ordinary commercial agreement”. It is therefore relevant for the Court to examine the analysis made by Mr. de Gray for this purpose.

[128] After reviewing the main terms of the SADI Agreement, Mr. de Gray concluded that it was not an "ordinary commercial agreement". In order to draw this conclusion, Mr. de Gray first drew the following three conclusions:

> 1. The rate of return implicit in the agreement of approximately 2.5% is significantly lower than the fair market rate of return for a financial instrument whose risk profile is comparable to that of the agreement;
>
> 2. The agreement is subject to minimum clauses and does not contain any of the financial clauses characteristic of a commercial agreement of this type;
>
> 3. The agreement contains several other terms that are not typical in a commercial agreement of this type. Its terms are driven primarily by political considerations or government action, rather than commercial motives.

[129] It is, therefore, appropriate to examine each of these conclusions in more detail.

[130] Mr. de Gray concluded that the rate of return is one of the main conditions of an agreement such as the SADI Agreement. The Court finds based on the testimony of Mr. de Gray and in the absence of other evidence, that the rate of return of an agreement having the same object as the SADI Agreement is one of the main conditions of such an agreement. For the same reasons, the Court also concludes that the SADI Agreement's implied rate of return of approximately 2.5% is substantially lower than that of financial instruments with a similar risk profile. Moreover, the appellant has not presented any evidence to establish that a lender would have concluded, in order to promote its commercial interests, an agreement such as the SADI Agreement at an interest rate of 2.5% "ordinary business arrangement".

[131] That said, the Court nevertheless examined the facts on which Mr. de Gray relied to conclude that the rate of return on the SADI Agreement is substantially lower than that of financial instruments with similar risk.

[132] Mr. de Gray examined, for the period from 2008 to 2014, the interest rates of Government of Canada bonds, United States treasury bills, bonds issued by Canadian companies and those issued by companies operating specifically in the aerospace and defence sectors. Mr. de Gray also reviewed the commercial loans obtained by CAE during the same period. Finally, he reviewed how CAE has treated the SADI Agreement in its financial reports.

[133] The interest rate of a financial instrument considered risk-free is useful for the purposes of the analysis to be carried out by the Court. However, only the Government of Canada bond rate is retained by the Court because Mr. de Gray did not explain why the Court should consider the risk-free rate in effect on the American market. On March 30, 2009, when the SADI Agreement was signed, this rate was 3.65 % on average. During the period from 2008 to 2014, the average rate fluctuated from 2.88% to 4.33%.

[134] In this case, it is not necessary to consider the interest rates of bonds issued by companies in the Canadian market. A bond issue is not a loan, they are completely different transactions. The Court understands that it is possible to compare different “financial instruments” according to the risk associated with each of them. However, it is not necessary to do so in this case because Mr. de Gray had access to information concerning commercial loans obtained by CAE. The Court agrees with Mr. de Gray's conclusion that the commercial loan interest rate is an indication of the market interest rate applicable to an agreement comparable to the SADI Agreement. The commercial loans obtained by CAE effectively constitute transactions with a higher degree of comparability than bond issues.

[135] As for the commercial loans obtained by CAE, Mr. de Gray noted that CAE entered into a number of loan agreements during the period 2008 to 2014. He noted that an amount of $120,000,000 was obtained by CAE in 2010 under a private placement. This one was particularly relevant as it was unsecured, had an average term to maturity of 8.5 years and a combined interest rate of 7.15% with interest payable semi-annually. Given the proximity of the date of conclusion of this agreement to the SADI Agreement, the amount of the loan and the fact that it was not accompanied by any guarantee, Mr. de Gray concluded that this agreement gave him a reasonable approximation of a prevailing market interest rate for an agreement comparable to the SADI Agreement. In fact, he is of the opinion that the interest rate on the SADI Agreement should have been higher than 7.15% for the following reasons: the agreement had a longer term than the private placement, ie 15-20 years; it benefited from a preferential classification; finally, it did not include the usual restrictive clauses.

[136] Finally, Mr. de Gray noted that, in its financial reports, CAE acknowledged that the contributions of the "lender" under the SADI Agreement had been obtained at an interest rate lower than the interest rate in force in the market.

[137] In view of this and as mentioned above, the Court concludes that the SADI Agreement does not constitute an “ordinary commercial agreement”. The appellant has not proven that a private company, with the aim of promoting its commercial interests, entered into this agreement. Rather, the evidence shows that the rate of return implicit in the agreement is significantly lower than the market rate of return for a comparable loan. Moreover, it is established that the risk-free interest rate on the market for the period in question was 3.65%. The Court, therefore, concluded that the case in point concerned a loan granted at a rate substantially lower than the market rate and that it would have been contrary to the commercial interests of a private lender to grant a loan at that rate.

D. Was the sum of $250,000,000 paid to CAE under the SADI Agreement "received" by CAE within the meaning of subsections 12(1), 127(9) and 127(18) of the ITA?

[138] The appellant submits that subsections 12(1), 127(9) and 127(18) of the ITA can only apply if the taxpayer “received” an amount as “government assistance”. The appellant submits that CAE did not "receive" an amount of money under the SADI Agreement because it is a loan and that a taxpayer cannot have "received" an amount without there having been a transfer of ownership of the amount in question.

[139] The verb “to receive” is not defined in the ITA. It is defined in the Le Robert dictionary as follows:

> “To be put in possession of (sth.) as a result of a shipment, a gift, a payment, a communication, etc.»

[140] This definition makes no reference to a transfer of ownership. It is therefore sufficient to be placed in possession of a good to have “received” it, whether or not there has been a transfer of ownership. The same applies to the English language version of those provisions in which the verb 'received' appears. The Merriam-Webster dictionary defines the word “receive” as:

> "To come into possession".

[141] There is no indication or evidence that Parliament intended to add this condition, namely the transfer of ownership of the property received, so that subsections 12(1), 127(9) and 127(18) of the ITA can find application. Accordingly, the Court finds that the contributions made to CAE under the SADI Agreement were indeed “received” within the meaning of subsections 12(1), 127(9) and 127(18) of the ITA.

[142] As for the appellant's argument based on the *Dunkelman* case law, the Court notes that it concerns the interpretation of the expression "transferred property" as it appears in subsection 22(1) of an earlier version of the ITA. However, since the definition of “government assistance” does not refer to this expression, the Court is of the opinion that it is not relevant to examine this case law in this case.

VII. CONCLUSION

[143] The Court concludes that the SADI Agreement is not an ordinary commercial agreement. Therefore, the amounts paid to CAE under the agreement during the 2012 and 2013 taxation years respectively constitute amounts received as “government assistance” within the meaning of subsection 127(9) of the ITA. For the same reason, the amounts that CAE was entitled to receive under the agreement during the said taxation years constitute "government assistance" within the meaning of subsection 127(18) of the ITA.

[144] Since the Court can dispose of this appeal on the basis of the conclusions set out above, it will not consider the subsidiary question set out in paragraph 8 of this judgment.

[145] For these reasons, the appeal is dismissed with costs.

These Amended Reasons for Judgment replace the Reasons for Judgment dated the 14th day of September 2021.

Signed in Ottawa, Canada, this 8th day of November 2021.

"Sylvain Ouimet"

Judge Ouimet

REFERENCE: 2021 CCI 57

COURT FILE NUMBER: 2016-4984(IT)G

TITLE OF CAUSE: CAE INC.

AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec)

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