Date: 20070810

Docket: T-2176-95

Citation: 2007 FC 826

Ottawa, Ontario, the 10th day of August 2007

Present: the Honourable Mr. Justice Lemieux

BETWEEN:

THE ATTORNEY GENERAL OF QUEBEC

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

1. Introduction

[1] Pursuant to the provisions of section 19 of the *Federal Courts Act*, the Attorney General of Quebec ("Quebec") is challenging by means of an action brought against Her Majesty the Queen in right of Canada ("Canada") on October 17, 1995 the decision on November 29, 1994 ("the decision") by the Minister of Finance of Canada ("the Minister") rejecting Quebec's application on September 28, 1993 for a stabilization payment for its revenue for the fiscal year 1991-1992. In that decision the Minister determined that Quebec was not eligible for the Income

Stabilization Program ("the Program") set out in the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*, R.S.C. 1985, c. F-8 ("the Act") and by its implementing regulations, the *Federal-Provincial Fiscal Arrangements Regulations, 1987*, SOR/87-240 ("the Regulations"), as amended and in effect in the fiscal year 1991-1992.

[2] In Canada's submission, this ineligibility for the Program was due to certain adjustments made by the Minister to Quebec's application, as a result of which Quebec's revenue subject to stabilization for the 1991-1992 fiscal year, according to the latter, was higher than for the 1990-1991 fiscal year.

[3] In 1994 section 19 of the *Federal Courts Act* read:

Intergovernmental disputes	Différends entre gouvernements
19. Where the legislature of a province has passed an Act agreeing that the Court, whether referred to it in that Act by its new name or by its former name, has jurisdiction in cases of controversies (a) between Canada and such province, or (b) between such province and any other province or provinces that have passed a like Act, the Court has jurisdiction to determine such controversies and the Trial Division shall deal with any such matter in the first instance. [Emphasis added]	19. Lorsque l'assemblée législative d'une province a adopté une loi reconnaissant que la Cour, qu'elle y soit désignée sous son nouveau ou son ancien nom, a compétence dans les cas de litige a) entre le Canada et cette province, ou b) entre cette province et une ou plusieurs autres provinces ayant adopté une loi au même effet, la Cour a compétence pour juger ces litiges et la Division de première instance connaît de ces questions en première instance. [Je souligne]

[4] It should be mentioned that the action at bar relates only to six sources or classes of provincial revenue and the adjustments made by the Minister, rejecting the corrections by Quebec to the real revenue for the fiscal year 1991-1992, from the following sources:

> [TRANSLATION]
>
> - Retail sales – revenue from application of the Quebec Sales Tax (QST) on the federal Goods and Services Tax (GST) in effect on January 1, 1991. Federal adjustment: + $168,248,000.
>
> - Alcoholic beverages – increased mark-up of the Société des alcools du Québec (SAQ). Federal adjustment: + $105,390,000.
>
> - Lotteries – increased mark-up of Loto-Québec. Federal adjustment: + $11,927,637.
>
> - Retail sales – cancellation of 1987 Canada-Quebec fiscal reciprocity agreement and coming into effect of Canada-Quebec protocol on January 1, 1991. Federal adjustment: + $36,456,000.
>
> - Quebec personal and corporate taxes – interest revenue on Quebec taxes assessed. Federal adjustment: + $20,429,000.
>
> - Revenue from public undertakings – the Société québécoise d'initiatives agro-alimentaires (SOQUIA). Federal adjustment: + $3,000,000.

[5] Quebec argued that the adjustments made to Quebec revenue subject to stabilization by the Minister for the 1991-1992 fiscal year, from these six sources, was the result of a misinterpretation and misapplication of subsections 6(1) of the *Act* and 12(1) of the *Regulations*, and that their effect was to deprive Quebec of a stabilization payment of some $126,000,749.

[6] Quebec did not dispute either the basic data or the calculations made by the Minister of Finance's officials in Ottawa. Instead, it is asking this Court in the action at bar to issue certain declarations on the six items at issue. In particular, Quebec is asking that this Court declare how

these six items should be considered under the *Act* and *Regulations*, and that the Minister should reconsider Quebec's application taking this Court's findings on these items into account. In other words, therefore, Quebec is asking the Court to limit itself to issuing declarations on points of law and to refer determination of the *quantum* of the claim back to the Minister for him to review the matter in light of the directions given by the Court. [Emphasis added]

[7] Quebec's approach has a great deal of merit. As we will see, the *Act* and *Regulations* require that the province's real revenue for 1991-1992, from a source of revenue subject to stabilization, shall be adjusted upward or downward to offset the financial impact of each change made by the province to its tax rates or structure.

[8] Identifying the financial impact of a change made by the province to its tax rates or modes of raising revenue is a somewhat complex exercise based on projections of what the real revenue would have been without the change. The declarations sought by Quebec recognize the Minister's jurisdiction in this area, as the Court has received no evidence on the financial impact of each declaration sought.

[9] In other words, Quebec is not asking this Court to rule on the monetary amount to which Quebec may be entitled for each of the six disputed items.

[10] The declarations sought are the following:

> **DECLARE THAT** the legislative amendment made by Quebec by adoption of the *Act to Amend the Retail Sales Tax Act and other fiscal legislation*, S.Q. 1990, c. 60,

to enable the QST to be applied to the GST, is a change made by Quebec to its fiscal structure within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(i) of the *1987 Regulations*, which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year;

DECLARE THAT the increased mark-up of the Société des alcools du Québec (SAQ) for the 1991-1992 fiscal year is an increase in the mark-up on goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(viii) of the *1987 Regulations*, which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year;

DECLARE THAT the revenue decrease from the retail sales tax for the 1991-1992 fiscal year which results from the coming into force on January 1, 1991 of the protocol on fiscal reciprocity between Canada and Quebec signed on December 21, 1990 is not a change made by Quebec in the structure of a mode of raising revenue of the province within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*a*) of the *1987 Regulations* [and] should be taken into account by the Minister of Finance of Canada in calculating the revenue subject to stabilization for that fiscal period;

DECLARE THAT the decrease in interest revenue received by Quebec on taxes levied on personal income and corporate income, which are a source of revenue within the meaning of section 4(2)(*a*) and (*b*) of the *Fiscal Arrangements Act* and are not covered by the definition of "miscellaneous revenue" set out in section 4(2)(*bb*) of the *Fiscal Arrangements Act* and section 5(1)(*ee*)(viii) of the *1987 Regulations*, should be taken into account by the Minister of Finance of Canada in calculating the revenue subject to stabilization for the 1991-1992 fiscal year;

DECLARE THAT the increased mark-up of the Société des alcools du Québec (SAQ) for the 1991-1992 fiscal year is an increase in the mark-up of goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(viii) of the *1987 Regulations*, which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year;

DECLARE THAT revenue from the Société québécoise d'initiatives agro-alimentaires (SOQUIA) is revenue from a business enterprise within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 5(1)(*b*)(ii) of the *1987 Regulations*, which the Minister of Finance should take into account in calculating revenue subject to stabilization for the 1991-1992 fiscal year;

> **DECLARE THAT** the Minister of Finance of Canada must take the findings of this Court on the questions submitted into account in considering the Government of Quebec's application for a statilization payment;
>
> **WITH COSTS.**

[11] For its part, Canada argued that the Minister's determinations on the six items in the application were justified and that they are not reviewable by this Court. What is more, Canada argued that even if Quebec were successful on the items at issue, the [TRANSLATION] "financial impact" of the determinations, adjustments and corrections made by the Minister of Finance of Canada would not have the effect alleged by Quebec on the amount of the stabilization payment. Canada submitted that, if Quebec were successful as a result of this action, the amounts alleged by the province did not represent the actual financial impact of the increased mark-up of the SAQ, for example, or of inclusion of revenue from interest assessed by Quebec on personal and corporate income. In such a case, the Minister would have to go back to his drawing board and calculate the amount of the corrections required.

2. Income Stabilization Program

[12] In 1956 the federal Parliament adopted the *Federal-Provincial Tax-Sharing Arrangements Act*. That *Act* provided that, from April 1, 1957 to March 31, 1962, the Minister might pay a province a tax equalization payment, a tax rental payment and a stabilization payment that did not exceed the ceiling inserted in the *Act*. The Revenue Stabilization Program was renewed by the federal government every five years from 1962 to 1982 following federal-provincial negotiations on fiscal arrangements. In 1982 the federal Parliament eliminated the expiry date of the Program.

[13] The Stabilization Program created a mechanism by which a province receives a monetary payment from the federal government to compensate for a decrease in its revenue subject to stabilization in a fiscal year, in the case at bar 1991-1992 (the reference year), as compared with that of the previous fiscal year (here 1990-1991), where the decrease in the province's revenue during the reference year is not due to changes in the rates or structure of its own taxes or other provincial modes of raising revenue. In other words, the purpose of the Stabilization Program is not to compensate provinces for changes in revenue resulting from their own actions. Accordingly, a province clearly could not act to reduce its revenue and then seek a stabilization payment from the federal government under the program to offset the reduction. Conversely, a province could not be penalized if it took actions which had the effect of increasing its revenue subject to stabilization or of avoiding a decrease. The *Act* and *Regulations* therefore provide for adjustments enabling the Minister to compare the revenue of a province from one year to the next within a constant fiscal structure.

[14] In its memorandum, Canada described the nature of stabilization payments as being the result [TRANSLATION] “of a federal initiative designed to compensate provinces whose revenue falls from one year to the next as a result of economic conditions”. Essentially, under the Program a province is eligible for a stabilization payment when its “revenue subject to stabilization” for the reference year (1991-1992) – adjusted in accordance with the adjustment procedure set out in the Act and Regulations – is less than that in the previous year (1990-1991).

[15] To determine whether a province is eligible for a payment to stabilize its revenue, the Minister must:

> [TRANSLATION]
>
> 1. First, determine what the province's "income subject to stabilization" was during the reference year and the previous year;
>
> 2. Then, adjust the income subject to stabilization in the reference year so as to offset the effects of changes made by the province to its tax rates or structure; and
>
> 3. Finally, compare the province's adjusted revenue for the reference year with that of the previous year to determine whether the province experienced a decrease or increase in the adjusted revenue.

[16] The concept of "revenue subject to stabilization" is defined in subsection 6(2) of the *Act*. Canada and Quebec agreed that this refers to all revenue which a province derives from virtually all the "revenue sources" listed in subsection 4(2) of the *Act* and defined at greater length in subsections 5(1) and (2) of the *Regulations*. Thus, revenue subject to stabilization includes virtually all of a province's revenue, namely taxes, levies, Crown corporation dividends, certain dues and permits, federal transfer payments, and so on.

[17] To determine whether a province experienced a decrease in its "revenue subject to stabilization" in the reference year as compared with the previous year the Minister must, under paragraph 6(1)(*b*) of the *Act*, "adjust" the province's revenue subject to stabilization for the reference year to offset the effects both of a decrease and an increase in revenue resulting "from changes made by the province in the rates or in the structures of provincial taxes or other modes of raising the revenue". This adjustment by the Minister is made by analyzing and adjusting upward or downward the province's real revenue for the reference year from each of the sources of revenue subject to stabilization.

[18] To the Court's knowledge there is only one decision interpreting the provisions regarding stabilization payments in the *Act*, following an arbitration between Canada and Alberta presided over by the Hon. William McIntyre, former justice of the Supreme Court of Canada, assisted by two eminent lawyers, John F. Howard and Harold H. MacKay. The issue was whether a credit extended by Alberta to certain oil companies should be classified under the "corporation tax" revenue source or a revenue source associated with a non-renewable resource.

[19] From this arbitral decision I derive the following principles:

1. A stabilization payment is made to a province if the latter experiences a decline in its eligible revenue from one year to another.

2. The Stabilization Program does not provide for any payment if the decline in the province's revenue results from changes made by the province to its fiscal policy.

3. "The Fiscal Arrangements Act and regulations thereunder constitute a complex and comprehensive framework within which revenues collected by the federal government may flow to the provinces of Canada to be used by the provinces to finance public services provided by them within their constitutional sphere of activity."

4. "The right of a Province to stabilization is determined pursuant to Section 6 of the Fiscal Arrangements Act by a determination of the Minister of Finance of Canada (the "Minister") of the amount by which the "revenue subject to stabilization" for the preceding fiscal year. "Revenue subject to stabilization" is defined in subsection 6(2) of the Fiscal Arrangements Act, by reference to the "revenue sources" defined in subsection 4(2) of that statute. Section 6 requires the Minister, in making his determination, to make adjustments to offset changes in the rates or structure of provincial taxes or other revenues. This ensures that there will be an accurate measure of the

comparable revenue streams in the two years, notwithstanding changes in provincial fiscal policy."

5. "For purposes of determining the revenue from a revenue source for fiscal stabilization purposes, the Regulations require the Minister to make two sets of adjustments to the amounts certified by the Chief Statistician of Canada:

a) …
b) Pursuant to Regulation 12: adjustments to offset changes in the rates or in the structure of provincial taxes in conformity with the general concept set out in subsection 6(1) of the Fiscal Arrangements Act.

The evident purpose of these adjustments is to ensure that the amounts to be compared in respect of the two years underlying the stabilization determination will be equivalent in all material respects. They permit stabilization payments to be sought only where there is, within the principles of the Fiscal Arrangements Act and the regulations, a real decline in provincial revenues in absolute terms, accurately measured, after the effect of provincial policy changes has been eliminated. It is notable that in so doing the Act requires that the decline be measured in respect of each revenue source under consideration not on a general or global basis. This is of particular importance because as explained below, under the Act, different rules apply to different revenue sources for purposes of stabilization."

6. "The stabilization entitlement is then computed on the basis of the comparison of the revenue streams from the two years, as so determined"

7. "Throughout the Fiscal Arrangements Act and Regulations there is, as has been noted, repeated emphasis upon separate nature of each of the 32 revenue sources and the importance of discrete and accurate calculation of each. This is of fundamental importance in the resolution of the question before us because the Act and Regulations provide a set of rules designed to ensure accurate comparisons and to eliminate artificial or distorted results in calculations including those credits or reductions of revenue sources. This then is the statutory framework of the Fiscal Arrangements Act"

8. "In context, our view is that in applying Regulation 5(5)(*a*), neither the statute within which a "rebate, credit or reduction" entitlement is created nor the method by which the "rebate, credit or reduction" is credited to a taxpayer should be determinative of the revenue source which is to be reduced in the calculation. Rather, in order to achieve the intent of the Fiscal Arrangements Act and the Regulations, one must ascertain that revenue source to which the rebate, credit or reduction, in its substance, applies."

> 9. "The Fiscal Arrangements Act and the Regulations are very precise in their mechanisms, both for equalization and stabilization, to achieve an accurate calculation of specific revenue sources for year-to-year comparative purposes. The need for such accuracy is particularly evident for resource revenues which, for stabilization purposes, have the unique 50% threshold principle outlined above. In order to determine the amount of money which should flow from the federal government to any province in respect of stabilization, a rebate, credit or reduction which has had the ultimate effect or reducing the net revenue to the province fro a given source must be offset against that particular revenue source. To do otherwise should be to distort the calculation in an artificial manner. That cannot have been the intent of the Regulations which are designed to eliminate artificialities.
>
> In the result, the words "in respect thereof" in Regulation 5(5) (a) must be read to relate to that revenue source to which the rebate, credit or reduction is linked, i.e. the revenue source with which there is the most substantial connection in economic terms. The linkages to resource revenues in respect of ARTC are irresistible…"
>
> 10. "The application of the ARTC made by the Province of Alberta for the purpose of accurately determining non-renewable resource revenue under the Trust Fund Act does not, or course, conclusively establish that a similar application should be made to determine accurately the revenue from a revenue source under the Fiscal Arrangements Act. However, it would appear that similar policy reasons underlie the adjustments of amounts of revenue sources in both statutes and it seems both consistent and reasonable that the adjustments should be numerically identical. While the form of a provincial statute cannot control the interpretation of a federal enactment, the statutory context of the Trust Fund Act is persuasive support for the characterization sought by the Province in respect of the Fiscal Arrangements Act determination."

3. Dispute between Quebec and Canada

[20] As mentioned earlier, the scope of the dispute to be considered by the Court in the case at bar is limited to certain determinations by the Minister in his analysis of Quebec's eligibility for a stabilization payment for the 1991-1992 fiscal year. In particular, Quebec argued that the

Minister contravened the provisions of the *Act* and *Regulations* by refusing to recognize the deductions from real revenue in 1991-1992 which it made to the six sources of revenue subject to stabilization, considering that for each source the real revenue had changed because of its efforts. In Quebec's submission, the Minister's refusal deprived it of a stabilization payment totalling $126,749,000 for the reference year.

[21] The first item in the dispute concerns the adoption by the Quebec National Assembly in December 1990 of the *Act to Amend the Retail Sales Tax Act and other fiscal legislation* to authorize in particular application of the QST to the new GST which came into effect on January 1, 1991. Essentially, the Minister had to decide whether this provincial legislation constituted a change in the QST structure within the meaning of the *Act* and *Regulations* for the 1991-1992 fiscal year. Quebec submitted that the legislation was in fact such a change to its tax structure and that the Minister should not have adjusted its application in respect of this provincial source of revenue subject to stabilization for the 1991-1992 fiscal year, by increasing the amount representing the financial impact of this legislation, calculated by Quebec, namely $168,284,000. Canada's position was that the Quebec *Act* did not make any change to the QST fiscal structure since prior to 1991 the QST taxed the old federal sales tax (FST).

[22] In the second and third items at issue, the Minister essentially had to determine whether the Société des alcools du Québec ("the SAQ") and the Société des loteries et courses du Québec ("Loto-Québec") had increased their mark-up on goods sold to the public for the 1991-1992 fiscal year within the meaning of the *Act* and *Regulations*. Quebec argued that the SAQ and Loto-Québec had in fact made such an increase in their mark-up, which resulted in increases in

their real revenue of $105,390,000 and $11,973,000 respectively for the 1991-1992 fiscal year compared with that for 1990-1991. Accordingly, Quebec maintained that it was justified in deducting these amounts from the total real revenue from the provincial source subject to stabilization for the year of the application, and the Minister refused to agree to this. Canada's position was that Quebec had never established that the mark-up of the two corporations had in fact increased.

[23] On the third item at issue, the Minister had to determine whether the cancellation on January 1, 1991 of the *Fiscal Reciprocity Protocol, 1987* between Canada and Quebec, applicable for five years, was a change by Quebec in the structure of a mode of raising revenue in the province within the meaning of the *Act* and *Regulations*. Under that Protocol, Canada paid Quebec the QST from purchases by Canada in Quebec, and in return Quebec paid Canada on purchases by the Government of Quebec revenue from the FST which was abolished on January 1, 1991 when the GST came into effect. Quebec maintained that the cancellation of this Protocol was not such a change. Accordingly, Quebec argued that the Minister should not have added an amount of $36,456,000 to its revenue subject to stabilization for the 1991-1992 fiscal year. In Quebec's submission this amount should, on the contrary, be deducted from Quebec's QST revenue for the reference year, as it suggested in its application, since it was a decrease in revenue from the retail sales tax which did not result from any change made by Quebec. Canada contended that the cancellation of the agreement was requested by Quebec.

[24] Finally, in analyzing the fourth and sixth points at issue, the Minister had to determine respectively whether the interest revenue received by Quebec from its taxes on personal income

and corporate income, as well as dividends received from SOQUIA, was a source of revenue included in the province's revenue subject to stabilization. Quebec argued that this was the case and that the Minister had to compensate for the decrease in its revenue subject to stabilization between the two years in question, granting the province $20,429,000 and $3,000,000 which were the equivalents respectively of the revenue decrease from interest received by Quebec on personal and corporate income taxes and of the revenue decrease from SOQUIA between the fiscal years 1990-1991 and 1991-1992. Canada's position was that these two revenue sources mentioned in the Quebec application were not sources of revenue subject to stabilization and so no adjustment was required.

[25] The total of all these adjustments disallowed by the Minister amounted to $345,532,000. Quebec argued that in his decision of November 29, 1994 the Minister incorrectly added this amount in its application to its revenue subject to stabilization, thereby arriving at a positive amount of $218,783,000 for 1991-1992 as compared with that for 1990-1991. In the Minister's submission, Quebec's revenue subject to stabilization for 1991-1992 as compared with that for 1990-1991 justified no payment to Quebec. Quebec submitted that an amount of $345,532,000 should be deducted from the Minister's calculation, which would justify a stabilization payment to Quebec amounting to $126,749,000.

4. Decision-making process

[26] After a preparatory meeting in June 1993 between officials of the Quebec Ministère des finances, responsible for preparing the stabilization application for the 1991-1992 fiscal year, and

officials of the federal Department of Finance responsible for considering the application, including the late John Hodgson, the Government of Quebec submitted to the Minister an application dated September 28, 1993 for a stabilization payment in the amount of $282,476,000 for that fiscal year (Exhibit P-1).

[27] The federal Finance Department team responsible for considering this application was headed by the late John Hodgson, head of the equalization, program financing and other transfer section in the Department's Federal-Provincial Relations Division. He was assisted by Sylvie Daigneault and Donald Bélanger (the federal team). The federal team undertook a preliminary analysis of the application by Quebec, which in fact was not alone as all provinces except British Columbia and Alberta had made such applications for the 1991-1992 fiscal year.

[28] The hierarchy in the federal Department of Finance in 1993 was as follows:

> 1. The late Mr. Hodgson's section first made an analysis and was in regular contact with higher authority;
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> 2. The late Mr. Hodgson's immediate line superior was Guillaume Bissonnette, director of the Federal-Provincial Relations Division; he and his assistant director Frank Gregg participated in preparing the recommendation to the Minister for his decision;
>
> 3. Assistant Deputy Minister Susan Peterson was kept informed on a weekly basis of developments in the analysis of provincial applications for stabilization payments and took part in preparing recommendations to then Deputy Minister David A. Dodge; she prepared briefing notes giving summaries or drew up recommendations to the Minister on provincial stabilization applications, including that by Quebec; these notes were dated September 30, 1993 and June 14 and October 31, 1994;
>
> 4. David Dodge was also kept informed by Ms. Peterson of developments in the analysis and took part in preparing the Minister's decision; in fact, on November 9, 1994 he sent his Minister, the Hon. Paul Martin, a memorandum summarizing the points of disagreement between the provinces, including Quebec,

> setting out various scenarios and compromises on the items identified and commenting on possible strategies.

[29] As part of the decision-making process regarding applications by the provinces for stabilization payments, including that by Quebec, it was established that Ms. Daigneault prepared weekly notes setting out the amounts claimed and, as of August or September 1994, problem areas which arose and the respective positions. These notes circulated among Mr. Hodgson's superiors, up to Mr. Dodge.

[30] It was further established that early in November 1994 there was a meeting between Mr. Dodge, Mr. Hodgson and Ms. Daigneault. At that meeting Mr. Dodge reviewed a 30 to 40-page memorandum setting out problem areas that had arisen in connection with provincial stabilization applications and the arguments made on either side.

[31] After several exchanges between the two teams and some verification or collection of information by the federal team, an initial meeting between the two teams was held in Québec on March 7, 1994.

[32] At that meeting, Canada tabled a document dated March 7, 1994 and titled [TRANSLATION] "Possible adjustments to Quebec's 1991-1992 claim under the Stabilization Program" (Exhibit D-44). Several adjustments were identified, including those relating to the six aforementioned sources of revenue subject to stabilization, which constitute the nub of the dispute between the parties in the case at bar. The purpose of the discussions at the meeting of March 7, 1994 was to clarify the reasons for the adjustments suggested by the federal team.

[33] After that meeting, the analysis continued on either side and relations between the parties remained open and cordial.

[34] On September 12, 1994 a second meeting between the two teams was held in Ottawa. At that meeting Quebec tabled a revised application (Exhibit P-2), dated September 9, 1994. The purpose of the revision by Quebec was mainly to update statistics on Quebec's real revenue during the reference year, the inflation factor and an upward compensation for federal transfers to Quebec during the 1991-1992 fiscal year. Quebec made no changes to its application regarding the six sources of revenue subject to stabilization at issue in the case at bar. At the meeting of September 12, 1994, the two parties tried to define the reasons in support of their positions.

[35] On November 29, 1994, the Minister wrote the Hon. Jean Campeau, Minister of Finance in the Government of Quebec, to tell him that he had concluded that after the adjustments required by the Act Quebec was not eligible for the fiscal Stabilization Program in respect of 1991-1992 (Exhibit P-3), indicating that [TRANSLATION] "your officials will shortly be receiving a final document setting out in detail the analysis supporting this conclusion."

[36] On December 5, 1994, the Quebec Minister of Finance wrote the Minister to tell him of Quebec's disagreement with the analysis that had led to the negative response (Exhibit P-4), noting that [TRANSLATION] "the dispute is mainly about the interpretation to be given to the measure adopted by Quebec in 1991 providing for application of the Quebec Sales Tax (QST) to

the price of goods and services, including the Goods and Services Tax (GST).” Quebec formally asked the Minister if this question and the other items of disagreement in the matter could be submitted to arbitration. This procedure was used to settle a dispute between the Governments of Canada and Alberta regarding access by that province to the Stabilization Program for the 1986-1987 fiscal year (“the Canada-Alberta arbitration”).

[37] On December 21, 1994, the Minister rejected Quebec’s arbitration proposal. Rather, the Minister indicated to Mr. Campeau:

> [TRANSLATION]
>
> . . . there is another way of appealing my decision, if that is your intention. As you know, section 19 of the *Federal Courts Act* sets out a legal procedure for resolving disputes. If you desire to challenge the legal validity of my decision, you have my assurance that the federal government will cooperate with your government to accelerate and simplify the procedure. [The Minister added, on the question of QST on the GST,] I should like to point out that my decision on treatment of the “GST included” prices was not taken lightly. Like my other decisions on other aspects of Quebec’s application and on the applications by other provinces, I think it is consistent with the purpose and intention of the legislation which I have to apply. [Emphasis added]

[38] The evidence established that on January 5, 1995 the late Mr. Hodgson sent Jean St-Gelais, then Director General of the Tax Policy and Autonomous Revenue Forecasting Branch of the Quebec Ministry of Finance, a document (Exhibit P-6) setting out in detail the federal analysis of the Quebec claim. In Canada’s submission, this 94-page document represents the Minister’s reasons for not accepting the adjustments made by Quebec to the six items at issue in the case at bar.

5. Legal process

[39] In the case at bar the legal proceedings followed the Federal Court Rules applicable to actions. The proceedings took place as follows:

> 1. October 17, 1995: service and filing of Quebec's statement of claim and of its amended statement of claim, served and filed on February 24, 1997;
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> 2. April 11, 1997: service and filing of Canada's defence and service and filing of its amended defence on October 2, 1997;
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> 3. March 3, 1998: service and filing of Quebec's affidavit of documents and the supplementary affidavit of documents signed by Luc Monty on October 2, 1998;
>
> 4. August 5, 1998: service and filing of Canada's affidavit of documents, signed by John Hodgson;
>
> 5. December 22, 1998: examination for discovery of Luc Monty (Exhibit D-49);
>
> 6. July 8 and 9, 1999 and September 17, 1999: examination after defence of John Hodgson (Exhibits P-24, P-25 and P-26);
>
> 7. February 1, 1999: examination after defence of Luc Monty (Exhibit D-50), André Legault and André Gingras;
>
> 8. December 21, 2000: order by Hugessen J. dismissing Quebec's motion to compel Canada to submit a new affidavit of documents and disclose documents listed in schedule 2 of the affidavit of documents signed by the late John Hodgson;
>
> 9. The order of September 5, 2001 by Hugessen J. setting out by consent the questions put to the Court in the proceeding to begin on October 1, 2002: Hugessen J. approved the reservation made by the defendant in its letter of August 31, 2001 to the presiding judge in the event of a judgment unfavourable to the federal Crown; this reservation raised the possibility of deciding further questions, namely whether Quebec's application was complete and sufficient on the question of the mark-up on SAQ and Loto-Québec products; Canada considered [TRANSLATION] "it might be necessary . . . to again appear before the Court for a decision of these additional points";

> 10**.** At Quebec's request, adjournment of the proceeding scheduled for October 1, 2002 on the ground that the principal Quebec witness, Luc Monty, was unable to testify for reasons relating to the tabling of the Quebec budget.

[40] The motion for disclosure by Quebec which was disallowed by Hugessen J. on December 21, 2000 requires further consideration.

[41] In his affidavit of documents Mr. Hodgson had listed, in Schedule II, certain documents for which Canada was claiming non-disclosure on the basis of public interest immunity. Canada's claim was supported by a certificate from the Clerk of the Privy Council, issued pursuant to section 39 of the *Evidence Act* and subsequently justified under section 37 of that *Act*.

[42] Among the documents Canada sought to protect were:

> 1. Three memorandums from Ms. Peterson, then Assistant Deputy Minister in the Federal-Provincial Relations and Social Policy Branch, to the federal Deputy Minister of Finance on September 30, 1993 and June 14 and October 31, 1994;
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> 2. Three memorandums from the federal Deputy Minister of Finance to the federal Minister of Finance dated November 9, December 12 and December 21, 1994; and
>
> 3. A memorandum from Ms. Daigneault dated September 14, 1994.

[43] In her certificate of September 1, 2000 pursuant to the *Evidence Act* it was admitted by Barbara Anderson that the documents which Canada was seeking to keep confidential and wished not to transmit to Quebec were internal briefing notes on various stabilization applications by the provinces and on the analysis of those applications, the disputed points raised and the recommendations to the Deputy Minister and the Minister.

[44] In particular, Ms. Daigneault's memorandum of September 14, 1994 was a report of the meeting of September 12, 1994 between Canada and Quebec and a summary of the points at issue.

[45] The reasons of Hugessen J. were preambular in form. I set out those which relate to the decision to reject Quebec's motion for disclosure of the aforesaid documents:

> [TRANSLATION]
>
> 1. Whereas the dispute between the parties as defined within the written proceedings relates only to the validity of the decision by the federal Minister of Finance that the province of Quebec is not eligible for the Stabilization Program for the 1991-1992 fiscal year; the basic data are not in dispute and the figures to be used in making calculations are not in question; essentially the dispute has to do with the way in which the Minister interpreted and applied the *Federal-Provincial Fiscal Arrangements Act* and the *Federal-Provincial Fiscal Arrangements Regulations, 1987*; there is no allegation that the Minister infringed the rules of natural justice or that the decision-making process was affected by any formal defect whatever; in the defendant's submission, the Minister erred in law in interpreting six particular aspects of the Quebec application;
> 2. Whereas therefore the internal documents created within the federal government regarding the process of consultation and the drafting of the reply to the application made by Quebec are not in any way relevant to the issue; the Minister's decision and the reasons therefor will be judged exclusively by their content; the opinions, memoranda,

suggestions and drafts prepared by the Minister's subordinates, as well as minutes of interdepartmental or intergovernmental consultations, can in no way assist the Court in performing its duty, which is exclusively to assess the validity of the decision in question in terms of the Act and Regulations;

3. Whereas further the privilege of non-disclosure relied on by the defendant in respect of the documents listed in Schedule II appears *prima facie* to be justified and there is no reason to think that the beneficial effect of disclosure of the documents in question could outweigh the public interest in their non-disclosure; internal communications between senior officials of a department and their Minister which lead to the drafting of a decision to be made by the latter should only be disclosed in very special circumstances; in the case at bar, the plaintiff has not established that such circumstances exist.

6. Evidence

[46] Quebec's evidence was submitted by the following witnesses:

- Luc Monty, Assistant Deputy Minister in the Quebec Ministère des finances since May 2000. In 1993 he was in the department's federal-provincial Financial Policy Branch responsible for preparing Quebec's stabilization application (Exhibit P-1) and the amended application (Exhibit P-2). With his immediate superior, Jean St-Gelais, he was present at the meetings of March 7, 1994 and that on September 12 of the same year. He testified regarding all aspects of Quebec's stabilization payment application and the dialogue between the Quebec team and the federal team.

- Gérald Plouffe, then senior vice-president, administration and finance, of the SAQ. He explained in evidence and in cross-examination the structure and operation of the SAQ mark-up. He also testified regarding the method used to increase the mark-up in 1991-1992 and the impact of the abolition of the FST on January 1, 1991 on list prices for various products sold by his employer.

- Gérald Houle, accountant, corporate-vice-president, finance and administration, with Loto-Québec. He testified regarding the Loto-Québec mark-up. In particular he explained how it was structured, what its components were and the principal factors determining changes in the mark-ups. He explained the rates of return on various games sold by his organization.

- Paul Levine, expert witness on the formula used in the Quebec application to calculate the mark-up for the SAQ and Loto-Québec. That formula is:

$$\frac{\text{Sales revenue} - \text{Sales cost}}{\text{Sales cost}}$$

He concluded that the mark-up for a given year could be expressed as a percentage or in dollars (Exhibit P-78).

- Jean-Charles Doucet, at the time in question an economist with the Ministère des finances, director of the department's Analysis and Debt Service Forecasting Branch. He was a member of the Quebec team involved in preparing its stabilization payment application as regards income tax, corporate capital tax and retail sales tax. He

testified on exchanges between the federal and Quebec teams at the meetings of June 15, 1993 and March 7 and September 12, 1994.

- Claude Vaillancourt, an employee of Statistics Canada, responsible for provincial analysis, and in particular public institutions. He testified regarding the classification of SOQUIA.

- Jocelyn Harvey, former director of finance and administration for SOQUIA. He explained how SOQUIA was created, its mandate, its financial statements and its investments in the agri-food sector in Quebec.

- Arthur Ridgeway, Director, Balance of Payments Division, Statistics Canada. He explained the system of business classification by Statistics Canada with relation to SOQUIA.

[47] For Canada, evidence was presented by the following testimony:

- Sylvie Daigneault, now Senior Economist with the Privy Council Office, who was instructed by her director, the late Mr. Hodgson, to analyse the Quebec application, and together with him and with Donald Bélanger to prepare Canada's preliminary reply. She attended the Canada-Quebec meetings of March 7 and September 12, 1994. She testified regarding all aspects of the Quebec application for a stabilization payment and Canada's concerns.

- Gilles Bussière, expert witness, Chartered Accountant and Expert in Business Appraisal. He commented on Paul Levine's report and testimony. The instructions he was given were to indicate whether there was a generally accepted definition in accounting circles for the terms "mark-up" (*marge de bénéfice, marge bénéficiaire*) and "mark-up rate" (*taux de marge de bénéfice*). In his report filed with the Court (Exhibit D-110), he concluded that mark-up increases refer to absolute values (or amounts), not to rates (or percentages) as Mr. Levine concluded in his affidavit.

- Graham Lyttle, Assistant Director, Public Institutions Division, Statistics Canada. The purpose of his testimony was to explain the classification given to SOQUIA in 1978 and the changes made to its classification in 1996.

[48] In Quebec's evidence in rebuttal Luc Monty, Gérald Plouffe and Paul Levine again testified along with the following:

- Jean St-Gelais, now President and Director General of the Quebec Autorité des marchés financiers, who at the relevant time (1990) was director of the federal-provincial financial policy division and supervised the work of the Quebec team, headed by Luc Monty, on Quebec's application for a stabilization payment. He testified regarding the exchanges he had with the late John Hodgson, either by telephone or at the meetings of March 7 and September 12, 1994.

- Raymond Boisvert, Assistant Deputy Minister with the Quebec Ministère du revenu, was director, taxation policy and fiscal forecasting, with the Quebec Ministère des finances from 1986 to 1990. He testified regarding various aspects of development of the federal reform involving the value added tax (VAT), later changed to the GST. He testified regarding the knowledge of federal officials of the impact on provincial revenues, including revenues from provincial monopolies on the sale of alcoholic beverages following abolition of the FST.

- Gilbert L'Écuyer, attorney, employed by the Quebec Ministère des affaires intergouvernementales. He testified regarding Canada's presumed knowledge of the nature and operation of the SAQ mark-up in the context of the decision made by GATT on March 22, 1988, following the complaint by the European Community regarding the practices of provincial liquor boards in Canada.

7. Structure of Act and Regulations

[49] As mentioned earlier, stabilization payments to the provinces are covered by Part II of the *Federal-Provincial Fiscal Arrangements Act*.

[50] The *Act* at present has several parts, including the following:

- Part I – Fiscal Equalization Payments;
- Part II – Fiscal Stabilization Payments to Provinces;
- Part III – Administration Agreements, including Sales Tax Harmonization Agreements;
- Part IV – Provincial Personal Income Tax Revenue Guarantee Payments;

- Part V – Canada Health and Social Transfer;
- Part VI – Alternative Payments for Standing Programs;
- Part VII – Fiscal Reciprocity Agreements;
- Part VIII – General.

[51] Section 6 of the *Act*, to be found in Part II of the *Act*, is the operational part of the Program since its first paragraph sets out the method for calculating stabilization payments. That paragraph provides that "the fiscal stabilization payment that may be paid to a province for a fiscal year is the amount, if any, as determined by the Minister, by which:

> (*a*) the revenue subject to stabilization of the province for the immediately preceding fiscal year
>
> exceeds
>
> (*b*) the revenue subject to stabilization of the province for the fiscal year, adjusted in prescribed manner to offset the amount, as determined by the Minister, of any change in the revenue subject to stabilization of the province for the fiscal year resulting from changes made by the province in the rates or in the structures of provincial taxes or other methods of raising the revenue of the province referred to in paragraphs (*a*) to (*cc*) and (*ee*) of the definition "revenue source" in subsection 4(2) …"
>
> [Emphasis added]

[52] The crucial provision of the implementing *Regulations* is contained in section 12. That provision sets out the method for adjusting income in the reference year within the meaning of paragraph 6(1)(*b*) of the *Act*.

[53] Under that provision, the Minister must:

> (*a*) add to the revenue subject to stabilization of the province for the fiscal year as otherwise determined the amount of the decrease in revenues in the fiscal year that results from changes in the rates or in the structures of provincial taxes or other modes of raising revenue, including the following changes . . .
>
> (*b*) subtract from the revenue subject to stabilization of the province for the fiscal year as otherwise determined the amount of the increase in revenues in the fiscal year that results from changes either in the rates or in the structures of provincial taxes or other modes of raising revenue, including the following changes . . .
>
> [Emphasis added]

[54] I would note that sections 4, 5 and 6 of the *Act* and the relevant provisions of the implementing Regulations are set out in an appendix to these reasons.

8. Questions to be answered

[55] According to the order by Hugessen J. on September 5, 2001, the issues are:

> [TRANSLATION]
>
> 1. What is the standard of review applicable to judicial review of the Minister's decision to reject the application by Quebec for stabilization payments made pursuant to the Act and Regulations for the fiscal year 1991-1992?
>
> 2. Did the Minister make a reviewable error in his findings regarding each of the six items at issue in the case at bar? Namely:
>
> (a) that the adoption of the *Act to Amend the Retail Sales Tax Act and other fiscal legislation* to enable the Quebec Sales Tax (QST) to be applied to the Goods and

Services Tax (GST) is not a change made by Quebec to its tax structure within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*b*)(i) of the Regulations for the 1991-1992 fiscal year;

(b) that the increased mark-up of the Société des alcools du Québec (SAQ) for the 1991-1992 fiscal year is not an increase in the mark-up on goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*b*)(viii) of the Regulations for the 1991-1992 fiscal year;

(c) that the revenue decrease from the retail sales tax [the QST] for the 1991-1992 fiscal year resulting from the coming into force on January 1, 1991 of the protocol on fiscal reciprocity between Canada and Quebec signed on December 21, 1990 results from a change made by Quebec in the structure of a mode of raising revenue of the province within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*a*) of the Regulations for the 1991-1992 fiscal year. Is the defendant right in arguing, alternatively, that the province's revenue from a fiscal reciprocity agreement is not revenue subject to stabilization?

(d) that the interest revenue received by Quebec on taxes levied on personal income and corporate income is not a revenue source within the meaning of section 4(2)(*a*) and (*b*) of the Act and is covered by the definition of "miscellaneous revenue" set out in section 4(2)(*ff*) of the Act and section 5(1)(*ee*)(vii) of the Regulations, which should not be taken into account by the

Minister of Finance of Canada in calculating the revenue subject to stabilization for the 1991-1992 fiscal year;

(e) that the increased mark-up rate of the Société des loteries et courses du Québec (Loto-Québec) for the 1991-1992 fiscal year is not an increase in the mark-up of goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*b*)(viii) of the Regulations for the 1991-1992 fiscal year;

(f) that the revenue from the Société québécoise d'initiatives agro-alimentaires (SOQUIA) is not income from a business enterprise within the meaning of section 6(1)(*b*) of the Act and section 5(1)(*b*)(ii) of the Regulations for the 1991-1992 fiscal year . . .

[Emphasis added]

9. Applicable rule of interpretation

[56] The solution to the questions raised in the case at bar depends largely on the interpretation of certain key words which appear in the *Act*, in particular the wording "resulting from changes made by the province in the rates or in the structures of provincial taxes or other modes of raising the revenue of the province referred to in paragraphs (*a*) to (*cc*) and (*ee*) of the definition 'revenue source' in subsection 4(2)" found in section 6 of the *Act* and section 12 of the *Regulations*, and the phrase "miscellaneous provincial taxes and revenues" found in the

definition of “revenue source” in paragraph 4(*ff*) of the *Act* and section 5(1)(*ee*) of the *Regulations*.

[57] In *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, Iacobucci J., speaking for the Supreme Court of Canada, indicated what the method of interpretation applicable to statutory construction was:

> Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter “*Construction of Statutes*”); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament . . .
>
> I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act “shall be deemed to be remedial” and directs that every Act shall “receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit”.
>
> Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.
>
> [Emphasis added]

[58] In *Rizzo Shoes*, above, the problem was whether certain employees of the company who were dismissed following the latter's bankruptcy were entitled to termination or severance pay pursuant to the Ontario *Employment Standards Act* (the ESA). The Ontario Court of Appeal answered this question in the negative, holding that when a creditor petitions an employer into bankruptcy the employees are not dismissed by the employer but by the operation of law.

[59] It should be noted that in this *Act* the legislature had used the following words in section 40: "No employer shall terminate the employment of an employee . . .". Paragraph 40(*a*)(1*a*) also contains the words "Where . . . fifty or more employees have their employment terminated by an employer", which led Iacobucci J. to observe that "the plain language of those provisions suggests that termination pay and severance pay are payable only when the employer terminates the employment".

[60] However, Iacobucci J. refused to adopt such a limiting interpretation and indicated his disagreement with such a method of interpretation at paragraph 20:

> At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.
>
> [Emphasis added]

[61] The Supreme Court of Canada accordingly allowed the appeal of Iacobucci J., concluding that although the Ontario Court of Appeal had considered the ordinary meaning of the provisions in question, it did not pay sufficient attention to the scheme of the *Act*, its purpose and the intention of the legislature. In other words, in the view of Iacobucci J. the context was not taken sufficiently into account.

10. Analysis

10.1. Preliminary question

[62] The first issue, that of the standard of review, raises a preliminary question regarding the jurisdiction conferred on the Federal Court by section 19 of the *Federal Courts Act*. Is this a trial *de novo*, an appeal or a judicial review?

[63] It should be noted that the answer to this preliminary question will determine the fate of the objection raised by Canada regarding the inadmissibility of any new evidence submitted by Quebec. This objection is based on a well-known rule associated with an application for judicial review, namely that apart from very special circumstances no new evidence may be submitted. To the extent that this rule applies to applications for judicial review, the objection raised by Canada will clearly have no bearing if I determine that the action at bar should be heard as a trial *de novo*.

[64] In the opinion of Quebec, the action at bar is not a judicial review and so this Court is absolutely not limited by the criteria applicable to applications for judicial review. In Quebec's submission the jurisdiction of this Court under section 19 of the *Federal Courts Act* and under

section 1 of the complementary Quebec legislation (S.Q. 1906, c. 6) differs in nature from the ordinary jurisdiction to decide disputes between the federal government and ordinary persons, or between the latter, jurisdiction which is conferred by sections 17 and 18 of the *Federal Courts Act*. In other words, Quebec argued that this Court should hear the action at bar *de novo*.

[65] In the event that this Court concludes that the nature of the action is one of judicial review, Quebec alternatively submitted that the applicable standard of review in the circumstances would be that of correctness, since the questions raised are simple questions of law which require reference to concepts of statutory interpretation and general legal reasoning, which is within the expertise of courts of law.

[66] Canada, for its part, maintained that even if the case were heard as an action the proceeding is still essentially an application for judicial review. In Canada's submission, section 19 merely confers jurisdiction and the parties should comply with the other legislative and regulatory provisions, as well as the rules of procedure and the rules of equity which ordinarily apply to the action brought. Further, Canada submitted that the proceeding is really in the nature of an application for judicial review, especially as the order by Hugessen J. adopts classic judicial review language. Accordingly, the action cannot be regarded as a trial *de novo*, since there is a decision by the Minister in question and procedural fairness requires that section 19 should not be used to create a new record and allow the Court to admit new evidence, which could have been produced earlier.

[67] With this in mind, Canada submitted that in the circumstances the applicable standard of review is that of reasonableness *simpliciter*. In Canada's submission the questions raised are questions of fact and mixed questions of fact and law. Canada submitted alternatively that, even if the Court were to conclude that the questions raised in the case at bar are pure questions of law, they deal with such a specialized area that the Court should exercise great restraint by applying at least the reasonableness standard of review *simpliciter*.

[68] That said, I feel it is not possible to decide this question without first undertaking an analysis of the historical development of section 19 of the *Federal Courts Act*.

[69] The first traces of section 19 as we know it today are to be found in section 54 of the *Act to Establish a Supreme Court and an Exchequer Court, 1875*, which received Royal Assent on April 8, 1875 (38 Vic., c. 11). By that provision, headed "Special Jurisdiction" and having the marginal note "Power to the exercise by consent of local legislatures", the Exchequer Court was given jurisdiction in cases:

(1) of controversies between the Dominion of Canada and such Province	1) les contestations entre la puissance du Canada et cette province; et
(2) of controversies between such Province and any other Province or Provinces, which may have passed a like Act.	2) les contestations entre cette province et quelque autre province ou quelques autres provinces qui auront passé un Acte semblable.

[70] To create the jurisdiction of the Exchequer Court the provinces had to adopt legislation acknowledging this jurisdiction, and this was done by the Quebec Legislative Assembly in 1906. This statute, which received Royal Assent on March 7, 1906, is to be found in chapter 6 of the *Statutes of the Province of Quebec* and is worded as follows:

> 1. The Supreme Court of Canada and the Exchequer Court of Canada, or the Supreme Court alone, according to the provisions of chapter 135 of the Revised Statutes of Canada, shall have jurisdiction in the following cases:
>
> 1. Of controversies between the Dominion of Canada and this province;
>
> 2. Of controversies between any other province of the Dominion, which may have passed an Act similar to the present Act, and this province.
>
> 2. In case sittings of the Exchequer Court of Canada are appointed to be held in any city, town or place in which a court house is situated, the judge presiding at such sittings shall have, in all respects, the same authority as a judge of the Superior Court in regard to the use of the court house and other buildings or apartments set apart in such place for the administration of justice.
>
> 3. This Act shall come into force on the day of its sanction.

[71] The English wording of section 19 always used the word “controversies” in these earlier forms, while the French text used the word “contestations” in 1875, which was subsequently replaced by the word “différends”.

[72] A slight alteration to the French text was made in section 19 of the *Federal Court Act*, 1970. Under this new wording, in cases “de litige entre le Canada et une province”, the Federal Court has jurisdiction “pour juger ces litiges et la Division de première instance connait de ces questions en <u>première instance</u>” [emphasis added]. At that time, the English was “the Court has

jurisdiction to determine such controversies and the Trial Division shall deal with any such matter in the first instance".

[73] I complete this overview of the historical development of section 19 by noting that in 1886, following a revision of the *Act to Establish a Supreme Court and an Exchequer Court*, section 54 became section 77. After these two courts were separated in 1906, section 32 of the *Exchequer Court Act* replaced section 77 (Statutes of Canada, chapter 140).

[74] In their written arguments, counsel for Quebec analysed all the decisions rendered under section 19 since 1875. For the purposes of this judgment, I need only analyse the cases which deal with the nature of the jurisdiction conferred by the section.

[75] The question of the nature of section 32 of the *Exchequer Court Act*, now section 19 of the *Federal Courts Act*, was dealt with for the first time by Idington J. of the Supreme Court of Canada in the *Ontario Trust Fund* case (1907), 39 S.C.R. 14. In that case, the province of Ontario sued Canada for money which it alleged was owed to it, namely ½ percent interest on the capital of certain funds held in trust which were the property of the province. Ontario also sought a ruling that the federal government did not have the right without its consent to alter or reduce interest rates on this money held in trust.

[76] The comments by Idington J. on the nature of section 32 of the *Exchequer Court Act* were as follows:

> It is to be observed that the case presents many novelties. When the rights were created upon which the parties rest, there was no court to determine which might be right or wrong. When we look at it as a case of the Crown against the Crown it is anomalous indeed.
>
> When we try to grasp the principles that must guide us we find those principles of law that govern individuals in their several relations in many respects apt for the purpose. They do not, however, cover the whole ground.
>
> When we reflect for a moment, we find that to apply only these principles to the adjustment of the rights of independent provinces, or of an independent province and the Dominion, we find we are face to face with problems requiring other considerations and for which we have no precedent. If the ordinary constitutional principles we have been accustomed to deal with fail to cover the whole ground, when we seek for precedents amongst those who are governed by a federal system, and the fundamental principles of our English law, and have developed those principles and those of constitutional government in relation to the rights of federated states *inter se*, we are warned by the recent case of Webb v. Outrin how much the Crown may stand for in our federal system . . .
>
> I have, following the lines of argument before us, treated the matter in part as if in law there could be a contract, and as if in fact there were a contract, though obviously it is an assumption of the Crown, contracting with the Crown. I have reasoned as if there might be and as if there were a trust created in fact, and in law, and as if we could bring to and within our jurisdiction a partial supervision of the execution of such a trust.
>
> [Emphasis added]

[77] After setting out section 32 of the *Exchequer Court Act*, Idington J. wrote:

> This section does not trouble with such difficulties, as suggested above, but in a most dramatic manner imposes on the court below and on us, the duty of settling the controversy whether arising from contract or trust.
>
> [Emphasis added]

[78] In 1909 the Supreme Court of Canada again resolved a dispute between Canada and Ontario. This decision is indexed as *The Province of Ontario and the Dominion of Canada* (1909), 42 S.C.R. 35. In that case the federal government was claiming by action reimbursement of money which it had spent to extinguish the title to aboriginal land following a treaty between Canada and certain Ojibway bands, land which was later found to be the property of the province of Ontario.

[79] In this latter case Idington J. wrote the following regarding the nature of the jurisdiction conferred on the *Exchequer Court* by section 32 of the *Exchequer Court Act*:

> We should, I think, first to consider the nature of the jurisdiction given by section 32 of the "Exchequer Court Act" in assigning to that court the power to "determine controversies" arising between the Dominion and a province that has acceded thereto.
>
> The language is comprehensive enough to cover claims founded on some principles of honour, generosity or supposed natural justice, but no one in argument ventured to say the court was given any right to proceed upon any such ground. It seemed conceded that we must find a basis for the claim either in a contractual or (bearing in mind that the controversy is the Crown against the Crown for both parties act in the name of the Crown) quasi-contractual relation between the parties hereto or on some ground of legal equity.
>
> [Emphasis added]

[80] In that case Duff J., as he then was, wrote at page 118:

> The "Exchequer Court Act" confers upon that court jurisdiction to decide a controversy such as this. It says nothing about the rule to be applied in reaching a decision; but it is not to be supposed that (acting as a court) that court is to proceed only upon such views as the judge of the court may have concerning what (in the circumstances

> presented to him) it would be fair and just and proper that one or the other party to the controversy should do. I think that in providing for the determination of controversies the Act speaks of controversies about rights; pre-supposing some rule or principle according to which such rights can be ascertained; which rule or principle could, it should seem, be no other than the appropriate rule or principle of law. I think we should not presume that the Exchequer Court has been authorized to make a rule of law for the purpose of determining such a dispute; or to apply to such a controversy a rule or principle prevailing in one locality when, according to accepted principles, it should be determined upon the law of another locality. This view of the functions of the court under the Act does not so circumscribe those functions as greatly to restrict the beneficial operation of the statute. Whatever the right of the Dominion in such a case as the present it is difficult to see how the province could (apart from the statute and without its consent given in the particular case) be brought before any court to answer the Dominion's claim. The statute referred to and the correlative statute of the province once for all give a legal sanction to such proceedings, and provide a tribunal (where none existed) by which, at the instance of either of them, their reciprocal rights and obligations touching any dispute may be ascertained and authoritatively declared.
>
> [Emphasis added]

[81] These comments by Duff and Idington JJ. received the approval of the Privy Council in the appeal from this judgment, indexed as *Dominion of Canada v. Province of Ontario*, [1910] A.C. 637, in which the reasons were written by Lord Loreburn:

> Their Lordships are of opinion that in order to succeed the appellants must bring their claim within some recognized legal principle. The Court of Exchequer, to which, by statutes both of the Dominion and the province, a jurisdiction has been committed over controversies between them, did not thereby acquire authority to determine those controversies only according to its own view of what in the circumstances might be thought fair. It may be that, in questions between a dominion comprising various provinces of which the laws are not in all respects identical on the one hand, and a particular province with laws of its own on the other hand, difficulty will arise as to the legal principle which is to be applied. Such conflicts may always arise in the case of States or provinces within a union. But the

> conflict is between one set of legal principles and another. In the present case it does not appear to their Lordships that the claim of the Dominion can be sustained on any principle of law that can be invoked as applicable.

[82] Finally, the Federal Court of Appeal also considered the question of the nature of the remedy provided by section 19 of the *Federal Courts Act* in *The Queen in right of Canada v. The Queen in right of the Province of Prince Edward Island*, [1978] 1 F.C. 533. In that case Prince Edward Island had brought an action for damages against Canada in the Federal Court pursuant to section 19. In the course of the proceeding Prince Edward Island essentially alleged that it had been injured by the interruption, as the result of a strike, of ferry service between Borden and Cape Tormentine, and by the federal government's failure to provide effective and continuous service between the island and the continent, as it was constitutionally bound to do. The members of the Federal Court of Appeal hearing the case were Jackett C.J. and Pratte and Le Dain JJ., before the latter was appointed to the Supreme Court of Canada.

[83] At trial, Cattanach J. had held that the Government of Canada had failed in its constitutional duty, but that failure did not occasion compensation by damages. The Government of Canada appealed the finding that it had failed in its constitutional obligation and the Government of Prince Edward Island filed a cross-appeal from the finding that the failure did not occasion compensation in the form of damages. Canada's appeal was dismissed and Prince Edward Island's cross-appeal allowed, Pratte J.A. dissenting on the cross-appeal.

[84] According to the Chief Justice of the Federal Court the trial judge "misconceived the true character of what was involved, when he":

> (a) regarded it as a claim against Her Majesty,
>
> (b) regarded it as a claim by Her Majesty,
>
> (c) regarded it as an "action", as that word is ordinarily used in the judicial system whose normal function is to settle disputes between ordinary persons.

[85] The Chief Justice went on to examine the question from the standpoint of the nature and character of the proceeding brought in the Trial Division. At paragraph 39 of his reasons, he wrote:

> I doubt that either Canada or a province is a person in the sense that it would, as such, be recognized as falling within the jurisdiction of a Superior Court having the jurisdiction of the common law Superior Courts. In any event, the Trial Division would, in my view, have no jurisdiction in a dispute between two such political entities apart from section 19 of the *Federal Court Act* . . . and the "agreeing" provincial Act. In my view, this legislation (section 19 and the provincial "Act") creates a jurisdiction differing in kind from the ordinary jurisdiction of municipal courts to decide disputes between ordinary persons or between the Sovereign and an ordinary person. It is a jurisdiction to decide disputes as between political entities and not as between persons recognized as legal persons in the ordinary municipal courts. Similarly, in my view, this legislation creates a jurisdiction differing in kind from international courts or tribunals. It is a jurisdiction to decide a dispute in accordance with some "recognized legal principle" (in this case, a provision in the legal constitution of Canada, which is, vis-à-vis international law, Canadian municipal law).
>
> [Emphasis added]

[86] At paragraph 40 of his reasons, the Chief Justice said the following:

> The effect of the enactment of the original forerunner of section 19, once the "agreeing" provincial legislation was passed, was, as I see it, to convert a legal (statutory) right of a "province" without a legal remedy into a legal right with a remedy, albeit a remedy that can be nothing more than a judicial declaration. [Emphasis added]

[87] At paragraph 41, the Chief Justice concluded that "under section 19, the parties thereto are the political entities . . . the peoples or public for the time being of the geographical areas involved". In his view, the action brought by Prince Edward Island was "a claim by the people for the time being of Prince Edward Island against the people for the time being of all Canada".

[88] Le Dain J. concurred in the conclusion of the Chief Justice. He also noted the fact that to facilitate the hearing of the action the parties had filed a joint statement of facts dealing with the establishment and maintenance of the ferry service.

[89] On the nature of the action under section 19 of the *Federal Court Act*, Le Dain J. said the following at paragraph 67:

> The constitution of Canada, of which the Order in Council admitting Prince Edward Island into the Union forms part, attributes rights and obligations to Canada and the Provinces as distinct entities, however these entities and their precise relationship to such rights and obligations should be characterized. Section 19 of the *Federal Court Act* and the necessary provincial enabling legislation create a jurisdiction for the determination of controversies between these entities, involving such rights and obligations among others. Like the Chief Justice, I am, with respect, of the opinion that neither the doctrine of the indivisibility of the Crown nor that of Crown immunity, whether processual or substantive, should be an obstacle to a determination of intergovernmental liability under this provision, which clearly contemplates that Canada and the provinces are to be treated in law as separate and equal entities for purposes of the determination of a controversy arising between them. The term "controversy" is broad enough to encompass any kind of legal right, obligation or liability that may exist between governments or their strictly legal personification. It is certainly broad enough to include a dispute as to whether one government is liable in damages to another. It is not clear whether the judicial power conferred by section 19 includes the power to award consequential as well as declaratory relief, but I assume, given the nature of the parties to a controversy,

> that what was contemplated was a declaration. The proceedings in the present case are brought as an action for damages by Her Majesty the Queen in the right of Prince Edward Island against Her Majesty the Queen in the right of Canada but since the proceedings are clearly intended to invoke the jurisdiction of the Court under section 19 the style of cause and the nature of the relief sought are in my respectful opinion matters of form that should not be permitted to defeat the substance and merits of the claim. I can see no reason why the proceedings should not be treated broadly as a claim for a determination or declaration by the Court that the Province is entitled to be compensated in damages for the alleged breach of duty by Canada.
>
> [Emphasis added]

10.2 Conclusions on preliminary question

[90] In my view, section 19 of the *Federal Courts Act* requires that it resolve the dispute between Quebec and Canada by applying principles of law to the facts established by the evidence at trial. I also consider that the purpose of this provision is not to give a court jurisdiction in judicial review over the decisions of federal boards, commissions or other tribunals, jurisdiction which it already has under section 18 of the *Federal Courts Act*.

[91] It follows that this Court must review the six determinations by the Minister based on the evidence admitted at trial without the constraint associated with the standards of review applicable to proceedings in judicial review and without being bound by the rule of inadmissibility of evidence that was not before the decision-maker, a rule applicable to applications for judicial review.

[92] This conclusion is based on the following findings:

1. Under section 19 if a province consents, the Federal Court has jurisdiction over disputes between Canada and that province. At the same time under section 19 the Court in exercising such jurisdiction must decide the disputes – "determine such controversies" – and it hears the questions at the trial level. Consequently, under section 19 this Court's function is clear: it is to resolve the dispute by deciding the matter on the merits at the trial level based on the evidence before it.

2. In the *Ontario Trust Fund* case, above, Idington J. wrote that section 19 "in a most dramatic manner imposes on the court below and on us the duty of settling the controversy". In the *Prince Edward Island* case, above, the Chief Justice acknowledged that a dispute brought before the Court under section 19 was not a claim against Her Majesty or an action in the ordinary sense, the usual function of which is to resolve disputes between ordinary persons. According to the Chief Justice, section 19 and the provincial Act created jurisdiction that differed in nature from the ordinary jurisdiction conferred on municipal courts to decide disputes between persons or between the Sovereign and an ordinary person. Under section 19 the Federal Court decides disputes between political entities, not between the legal persons recognized in ordinary municipal courts. He went on to note that section 19 has the effect of converting a legal right of a province without a legal remedy into a legal right with a remedy. In that case, Le Dain J.A. regarded the proceeding before him as a kind of action for damages, that is, as a claim for relief.

3. The historical background strongly suggests that section 19 contemplates a proceeding in which the legal and procedural framework is broader than that associated with judicial review. When the Exchequer Court was created in 1875 it was not given any jurisdiction in judicial review, a field which at the time was the exclusive jurisdiction of the provincial superior courts. It was not until 1970 that the Federal Court of Canada was given jurisdiction in judicial review over decisions by federal boards, commissions or other tribunals. Despite the introduction of exclusive jurisdiction in judicial review over federal boards, commissions or other tribunals, the Court retained its section 19 jurisdiction over disputes between Canada and a province, which indicates that this entirely unique jurisdiction was in no way subordinate to section 18 or section 28 of the *Federal Courts Act*.

4. Quebec is seeking a declaration of law. Before the reform of the Federal Court in 1990, a declaration of law was made under section 17 of the *Federal Courts Act* through an action heard by trial.

[93] Based on this analysis, I consider that Canada cannot properly argue that section 19 simply confers jurisdiction and that the parties remain subject to the rules of procedure applicable in applications for judicial review. Section 19 does not simply confer jurisdiction, as can be seen from the number of proceedings brought in the form of a trial *de novo* since this remedy has been in existence. The action could have been brought under section 18 in the form of an application for judicial review, but the parties decided otherwise. To now say that, despite the fact it was brought under section 19, the action should be treated as an application for judicial

review brought under section 18 would deprive section 19 of its function. Accordingly, I accept all the new evidence filed by either party, provided such new evidence existed before the Minister's decision.

10.3 Parties' agreement on principles for applying Program

[94] The parties agreed on the basic principles governing the Program. This mutual understanding resulted from an exchange in cross-examination between Ms. Daigneault and counsel for Quebec, which took place on January 5, 2005 (see transcript, pp. 223 to 242):

> 1. The purpose of the Stabilization Program is to compensate provinces that sustain a decrease in revenue from one year to the next as a result of causes beyond their control (p. 224);
>
> 2. A province will be entitled to compensation if the federal government does anything which causes a province's revenue subject to stabilization to fall (p. 225);
>
> 3. A province is entitled to compensation if its total revenue subject to stabilization is less for the year of the application than for the previous year by an amount equivalent to the difference between the two years (p. 226);
>
> 4. A province's revenue subject to stabilization is revenue adjusted for fiscal changes made by the province during the year of the application, not the latter's

actual revenue, compared with that of the previous year, in order to make the revenue correspond to a constant fiscal structure of the province for both years; if a fiscal change is made by the federal government, no adjustment is made for that change (p. 229);

5. In order to adjust a province's revenue subject to stabilization to make it correspond to the constant fiscal structure of the previous year, it is necessary to recalculate what the province's revenue would have been if there had been no fiscal change: in other words, it is not the actual revenue in the year of the application from a source which is compared, but what would have been realized if the fiscal structure had remained the same as in the previous year (pp. 231 and 233);

6. A province may be entitled to a stabilization payment even if its actual revenue adjusted for the year of the application increased during the year, since a province may have increased its taxes or the increase in its revenue is solely due to the fact that if it had not increased its taxes it would have suffered a decrease in its revenue (p. 234);

7. The adjustments mandated by section 12 of the Regulations are made to each of the revenue sources, and the pluses and minuses then adjusted to determine whether a province is eligible for a stabilization payment;

8. The adjustments mentioned in section 12 of the Regulations are intended to offset the impact of changes made by a province in its fiscal structure: in other words, their purpose is to ensure that a province does not gain an advantage by playing with its tax structure so as to reduce its revenue while claiming a federal stabilization payment (p. 237);

9. The federal government pays for a drop in a province's revenue subject to stabilization because of economic activity or on account of a factor beyond the province's control (p. 238);

10. The adjustments mentioned in section 12 of the Regulations are intended to ensure that a province which has effectively increased its revenue by any measure, compared with what the latter would have been without the measure, is not penalized for its effectiveness, provided the measure was a tax measure (p. 238).

10.4. Item (a) – QST on GST

[95] The declaration sought by Quebec on this item is:

> **DECLARE THAT** the legislative amendment made by Quebec by adoption of the *Act to Amend the Retail Sales Tax Act and other fiscal legislation,* S.Q. 1990, c. 60, to enable the QST to be applied to the GST, is a change made by Quebec to its fiscal structure within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(i) of the *1987 Regulations*, which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year . . .

[96] The issue as formulated by Hugessen J. is:

> Did the Minister make a reviewable error in his finding:
>
> (a) that the adoption of the *Act to Amend the Tax Act and other fiscal legislation* to enable the Quebec Sales Tax (the QST) to be applied to the Goods and Services Tax (the GST), is not a change made by Quebec to its fiscal structure within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*b*)(i) of the Regulations for the 1991-1992 fiscal year? [Emphasis added]

[97] Section 6(1)(*b*) of the *Act* reads:

> 6. (1) Subject to subsections (8) to (10), the fiscal stabilization payment that may be paid to a province for a fiscal year is the amount, if any, as determined by the Minister, by which
>
> (a) the revenue subject to stabilization of the province for the immediately preceding fiscal year
>
> exceeds
>
> (*b*) the revenue subject to stabilization of the province for the fiscal year, adjusted in prescribed manner to offset the amount, as determined by the Minister, of any change in the revenue subject to stabilization of the province for the fiscal year resulting from changes made by the province in the rates or in the structures of provincial taxes or other modes of raising the revenue of the province referred to in paragraphs (*a*) to (*cc*) and (*ee*) of the definition "revenue source" in subsection 4(2) from the rates or structures in effect in the immediately preceding fiscal year. [Emphasis added]

[98] Section 12(1)(*b*)(i) of the *Regulations* reads:

> 12. (1)(*b*)(i) In adjusting the revenue subject to stabilization of a province for a fiscal year pursuant to paragraph 6(1)(*b*) of the Act, the Minister shall:
>
> (*a*) add to the revenue subject to stabilization of the province for the fiscal year as otherwise determined the amount of the decrease in revenues in the fiscal year that results from changes in the rates or in the structures of provincial taxes or other modes of raising revenue, including the following changes . . .
>
> (*b*) subtract from the revenue subject to stabilization of the province for the fiscal year as otherwise determined the amount of the increase in revenues in the fiscal year that results from changes either in the rates or in the structures of

> provincial taxes or other modes of raising revenue, including the following changes:
>
> (i) the introduction of a new tax, fee, levy, premium or royalty during the fiscal year or during the immediately preceding fiscal year . . . [Emphasis added].

[99] The parties did not in any way dispute that a province's revenue subject to stabilization includes revenue which it derives from its sales tax, a revenue source mentioned in section 4(*d*) of the *Act*.

[100] The division of taxing powers under the Constitution is a point of cardinal importance in considering this first item. The Parliament of Canada may impose direct or indirect taxes, while the legislature of a province must confine itself to direct taxes. The courts have held that a sales tax imposed on the sale of goods at retail is a direct tax because it directly targets the consumer, who must bear the burden of it. The GST has also been recognized as a direct tax.

[101] On the other hand, the FST imposed on manufacturers was an indirect tax because the entity paying it would add the cost to its selling price to the distributor or retailer. Only the Parliament of Canada could impose it. In the case at bar, Quebec admitted that under the old FST system the QST taxed the FST because the latter was hidden in the retail selling price paid by the consumer.

[102] Under the new GST system, the tax is imposed on the purchase price at retail, and so is no longer hidden in the price as before. Quebec's reaction was to ensure that the QST applied to the purchase price plus the GST.

[103] On December 14, 1990 the Quebec National Assembly amended the definition of “sale price” in section 2 of its *Retail Sales Tax Act* (RSTA) to specifically mention the GST so that the latter would be included in the QST base. Before this amendment, the definition of “sale price” made no mention of the FST, an indirect tax imposed on manufacturers, as that mention was not necessary since the FST was included in the selling price.

[104] In Quebec’s submission, this amendment to the RSTA is a change by the province to the structure of one of its taxes (in this case the QST) which requires an adjustment pursuant to section 12(1)(*b*)(i) of the *Regulations*.

[105] However, the Minister rejected the downward adjustment made by Quebec to the actual revenue subject to stabilization from this source in the 1991-1992 fiscal year and added the amount of $168,284,000, which Quebec considered to be the financial impact of its legislative amendment.

[106] On this item in the Quebec application, therefore, the Court must determine whether the legislative amendment made to the RSTA to include the GST in the QST base is a “change . . . in the rates or in the structures of provincial taxes or other modes of raising the revenue” of Quebec within the meaning of paragraphs 6(1)(*b*) of the *Act* and 12(1)(*b*) of the *Regulations* which the Minister should take into account in his calculation of Quebec’s revenue subject to stabilization from that source for the 1991-1992 fiscal year.

[107] Without the amendment to the RSTA Quebec argued that the QST would be applied as of January 1, 1991 to a lower base, namely the selling price of goods excluding on the one hand the FST, an indirect tax abolished by the federal Parliament as of January 1, 1991, and on the other not including the GST in the purchase price of goods sold in Quebec, since as a direct tax it was also imposed on the selling price.

[108] In Quebec's submission, the purpose of the Program is to compensate a province which sustains a decrease in its revenue subject to stabilization from one year to another for reasons beyond its control. Quebec argued that the change to the RSTA had the effect of avoiding a decrease in its revenue subject to stabilization. Therefore, Quebec suggested, the Minister should take this effort by the province into account in his analysis: Quebec should not be penalized for adopting a measure which had the effect of avoiding a decrease in its revenue subject to stabilization. Thus, to determine the amounts of the stabilization payment the Minister should subtract from the actual amounts derived from that source $168,284,000, corresponding to the sum which Quebec had calculated it avoided losing by this change to its tax structure.

[109] Quebec submitted that the idea of a change made by a province to its tax structure within the meaning of subsections 6(1) of the *Act* and 12(1) of the *Regulations* should be given a broad and liberal interpretation. Any kind of change made by the province to its taxes or to one of its modes of raising revenue should occasion an adjustment, since it is hard to see why the legislature would have intended to exclude only the financial impact of certain types of voluntary measures by the province. Further, the use of the word "including" at the start of paragraphs 12(1)(*a*) and 12(1)(*b*) of the *Regulations* support[s] this interpretation.

[110] Accordingly, the amendment of the definition of “sale price” in the RSTA to change the base on which the QST was collected undoubtedly involves an amendment to one of Quebec’s modes of raising revenue and constitutes a broadening of the base of a tax contemplated by the *Regulations*.

[111] In Quebec’s submission, the Minister’s decision on this item was wrong. Without the broadening of the QST base, Canada testified that the Minister would have refused to award compensation for the decrease in revenue, since Quebec’s inaction would have been regarded as a change in its tax structure that would have required an upward adjustment of its sales tax revenue for 1991-1992, and so an equivalent reduction of its application. This is exactly what happened in the case of other provinces which did not include the GST in their provincial sales tax base.

[112] In Quebec’s submission, Canada is trying to find excuses for not compensating the provinces for revenue decreases that may have resulted from its own decisions in reforming its sales tax.

[113] Canada maintained that the legislative amendment referred to by Quebec was not a change in the rates or structures of its modes of raising revenue. There was a legislative measure, not a tax measure. Whether before or after the legislative amendment cited by Quebec, the QST mode of raising revenue remained the same. The QST always applied to the federal tax: the QST to the FST up to January 1, 1991 and the QST to the GST after that date. The legislative

amendment was neither a change to the applicable structure, a new tax nor a new mode of raising revenue.

[114] In connection with the federal tax reform, Canada acknowledged that Quebec made certain tax changes which the Minister took into account in Quebec's application for a stabilization payment:

> • Quebec reduced the rate of its QST by 1 percent (from 9% to 8%): the Minister reacted by adding to the real revenue from this revenue source the financial impact of the decrease;
>
> • Quebec broadened the QST tax base to include furniture, footwear and clothing: Canada reduced the 1991-1992 real revenue from this source to ensure that the 1991-1992 fiscal year compared on a constant basis with 1990-91.

[115] What is more, in Canada's submission the effect of the simulation Quebec used to measure the financial impact of the QST on the GST was to project what the revenue from the QST would have been if in the 1991-1992 fiscal regime the provincial tax had never applied to the federal tax. The Minister deemed that in fact this fiscal regime never existed: in 1990-1991 the provincial tax applied to all federal taxes (FST, excise tax and customs duties) and it remained the same in 1991-1992. The fiscal regime did not change.

[116] Canada therefore adjusted Quebec's simulation by adding an amount equivalent to the QST to the amounts representing retail sales for the 1991-1992 fiscal year so that those amounts actually represented the selling price of goods to which the QST always applied, that is a selling price including the FST before 1991-1992 and including the GST after 1991-1992.

[117] In conclusion, in Canada's submission the fact that a legislative amendment had to be made in order to preserve the same structure of raising revenue does not transform that legislative amendment into a change made by Quebec to the structure of its modes of raising revenue. Additionally, what should be taken into account in connection with the Program is fiscal changes made by the province, not fiscal changes made by the federal government (that is elimination of the FST and introduction of the GST), to which the provinces have to adapt, as for example by legislative measures.

[118] Section 12(1)(*b*) of the *Regulations* indicates that the amount to be deducted from revenue subject to stabilization for the current fiscal year corresponds to the amount of the increase of the revenues in the fiscal year that results from changes either in the rates or in the structures of provincial taxes or other modes of raising revenue.

[119] Two points are essential in considering this first point at issue. First, it must be a change made by the province. Secondly, the change must be to the rates or structures either of provincial taxes or of other modes of raising provincial revenue.

[120] The ordinary meaning of the word “change” is [TRANSLATION] “alteration” (*Le Robert*); [TRANSLATION] “making more or less different, altering” (*Trésor de la langue française*).

[121] “Structure” means [TRANSLATION] “organization of the parts of a whole” (*Trésor de la langue française*); [TRANSLATION] “complex and extensive organization, considered in its essentials” (*Le Robert*).

[122] In English “change” means “alteration, variation” and “structure” means “to organize the parts or elements of something” (*Black’s Law Dictionary*).

[123] In the implementing *Regulations* the legislature gave a non-exhaustive list of what may be regarded as changes in the rates or structure either of provincial taxes or other modes of raising revenue, including, first:

- termination of a tax, fee, levy, premium or royalty;
- decreases in these modes of raising revenue;
- decreases in the mark-up;
- changes in the ranges of the base to which these modes of raising revenue apply;
- changes in the classification of taxpayers;
- increases in deductions, credits or allowances which the taxpayer may claim;
- enlarging of exemptions;

and including, secondly:

- the introduction of a tax or other modes of raising revenue;
- increases in the rate of a tax and so on;
- decreases in rebates relating to a mode of raising revenue;
- decreases in the mark-up.

[124] In the case at bar, faced with the termination of the FST and introduction of the GST, a new direct tax, by Canada, Quebec amended the RSTA to specifically include the GST in its definition of selling price or purchase price. This amendment authorized Quebec to tax the GST through the QST.

[125] Canada acknowledged that Quebec made a change which Canada described as a legislative, not a fiscal change, because before the GST Quebec taxed the FST, the federal tax, through the QST: nothing had in fact changed as Quebec still taxed a federal sales tax.

[126] The problem is one of the construction of legislation. According to *Rizzo & Rizzo Shoes*, above, the analysis is to "[read] the words of an Act . . . in their context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act* and the intention of Parliament".

[127] To begin with, I have no difficulty concluding that by its ordinary and grammatical sense, seen in the context of the examples which the legislature itself set out in its *Regulations*, the amendment of the RSTA to allow application of the QST to the GST represents a change

(amendment to the RSTA) in the structure (a significant part) of one of its modes of raising revenue (the retail sales tax). I find in Quebec's favour on this point.

[128] Before the GST Quebec, through the QST, did not directly tax the federal sales tax (the FST): it taxed the purchase price paid by the consumer at retail, which itself included the FST imposed at the point of production. The amendment allowed Quebec to tax the GST directly. In practice, in the case of the SAQ the GST could tax the latter's mark-up, which was not the case with the FST, as it was included in the base price of its products sold to the public.

[129] In Canada's submission, the judgment in *Rizzo & Rizzo Shoes*, above, held that the *Act* and *Regulations* should be interpreted in a general context taking into account the spirit of the *Act*, the scheme of the *Act* and the intention of Parliament.

[130] As mentioned in the Canada-Alberta arbitration, the purpose of the *Act* is to facilitate transfer of revenue collected by the federal government to the provinces to finance the public services which each province provides within its legislative powers. In particular, the purpose of Part II of the *Act* is to stabilize revenue in the provinces to compensate for a decline in revenue in one year compared with that of the previous year.

[131] As the Canada-Alberta arbitration also indicated, the Minister must add the provincial revenue for the year of the application to offset provincial fiscal changes so as to accurately measure the revenue subject to stabilization in the two years, notwithstanding the changes desired in a province's fiscal policy. In other words, the purpose of the Minister's adjustments is

to ensure that provincial revenue in both years in question is comparable on an equivalent fiscal basis, otherwise the comparison would be distorted. The comparison exercise is a question of substance, not form.

[132] Canada is right in saying that in 1990 the QST taxed a federal sales tax (the FST) and that with the legislative amendment the QST in 1991 continued to tax a federal sales tax (the GST). Ms. Daigneault was right in saying that the methodology used by Quebec (the VDTAX exercise) did not permit an appropriate comparison between 1991-1992 and the previous year. The financial impact of this change is not what is alleged by Quebec.

[133] I feel that these two factors cannot serve to deny the fact that, by amending the RSTA, Quebec made a change in the fiscal structure of the QST.

[134] Quebec is entitled to the declaration sought. By an appropriate means, the Minister will have to measure the financial impact of taxation by the QST on the GST in 1991 in order to put it on a comparative basis with revenue derived from taxation by the QST of the FST in 1990.

10.5 Item (b) – SAQ mark-up

[135] The declaration sought by Quebec is:

> **DECLARE THAT** the increased mark-up of the Société des alcools du Québec (SAQ) for the 1991-1992 fiscal year is an increase in the mark-up on goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(viii) of the *1987 Regulations* which the

> Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year . . . [Emphasis added]

[136] The question formulated by Hugessen J. is:

> [TRANSLATION]
>
> Did the Minister make a reviewable error in his determination:
>
> (*b*) That the increased mark-up of the Société des alcools du Québec (SAQ) for the 1991-1992 fiscal year is not an increase in the mark-up on goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*b*)(viii) of the Regulations for the 1991-1992 fiscal year? [Emphasis added]

[137] Section 12(1)(*b*)(viii) of the Regulations read:

> 12. (1) In adjusting the revenue subject to stabilization of a province for a fiscal year pursuant to paragraph 6(1)(*b*) of the Act, the Minister shall:
>
> . . . . .
>
> (*b*) subtract from the revenue subject to stabilization of the province for the fiscal year as otherwise determined the amount of the increase in revenues in the fiscal year that results from changes either in the rates or in the structures of provincial taxes or other modes of raising revenue, including the following changes:
>
> (viii) increases, averaged over a year, in the mark-up on goods or services that are sold to the public by the province or its agencies. [Emphasis added]

[138] Canada acknowledged that a province's revenue subject to stabilization includes revenue from the sale of spirits, wines and beer ("alcoholic beverages" – sections 6(2) and (4)(2) of the *Act*; 5(1)(*j*), (*k*) and (*l*) of the *Regulations*) and that under paragraph 12(1)(*b*)(viii) if the

mark-up had increased on products sold by the SAQ during the 91-92 fiscal year, Quebec would be entitled to a downward adjustment of real revenue from these sources.

[139] Quebec made an adjustment to 1991-1992 real revenue from these sources in order to deduct the sum of $105,390,000 which the province determined was the financial impact resulting from a change made to one of its modes of raising revenue, in this case an increase in the mark-up on products sold by the SAQ to the public. When it was announced that the FST had been terminated and the GST had come into effect, the SAQ maintained that it revised its mark-up structure upward in order to maintain its earnings and the dividend level of its shareholder, the Quebec Minister of Finance.

[140] However, in his decision the Minister concluded that the evidence presented by Quebec did not show any increase in the SAQ's mark-up and that this evidence only established that there had been a change in the mark-up rate on products sold by the SAQ to the public.

[141] The methodology used by Quebec to establish an increase in the mark-up (*marge de bénéfice*) on products sold by the SAQ (spirits, wines and beer) was first to make a general comparison of the mark-up in 1991-1992 with that of 1990-1991 over the entire range of products sold by that agency, calculated by the formula: value of sales less cost of sales (gross profit) divided by cost of sales.

[142] According to that methodology, Quebec argued that the mark-up on products sold in 1990-1991 increased as compared with that of 1990-1991.

[143] Ms. Daigneault testified that Canada had several problems with the methodology used by Quebec and that Canada had expressed them to Quebec at the meeting of March 7, 1994, and repeated them at that of September 12, 1994, supported by a request for examples similar to those Canada obtained from Manitoba.

[144] One of Canada's main concerns was raised clearly by Mr. Hodgson in his examination after defence, to the effect that the formula chosen by Quebec showed no increase in the mark-up on each product sold to the public by the SAQ, simply a change in the rate or percentage of that mark-up, which was not sufficient. In Mr. Hodgson's opinion, Quebec had to show that the mark-up had increased in dollars, and this could only be done if Quebec established that the price of products sold by the SAQ had increased.

[145] Quebec reacted to the reservations expressed by Canada by presenting a new table at the September 12, 1994 meeting, but it used the same formula, this time calculating the mark-up not on all the products sold by the SAQ during the reference year and the previous year, but in relation to the three principal categories of products sold: spirits, wines and beer. In Quebec's submission, this table established an increase in the percentage of the mark-up for the reference year over the previous year.

[146] In her testimony Ms. Daigneault expressed several further concerns regarding the methodology used by Quebec to establish an increase in the SAQ's mark-up:

1. The formula used by Quebec only expressed an *ex post facto* result which she said concealed several factors that would be likely to alter the mark-up without the SAQ taking any specific action to increase it, citing as an example the decrease in the base price of a bottle of wine following termination of the FST;

2. The mark-up structure was volumetric or *ad valorem* in nature, so that the mark-up rate varied if the value or price of a specific product changed, without any action being taken by the SAQ to increase the mark-up.

[147] In short, Canada's position was that Quebec had not presented sufficient evidence to establish to the Minister that its mark-up had increased on products sold by the SAQ to the public. Quebec had to show that prior to the year of the application the province had legislated an increase in its mark-up.

[148] In cross-examination (transcript of January 6, 2005, at pages 170-173), Ms. Daigneault admitted that the question was not to determine whether the SAQ mark-up should be expressed in dollars or as a percentage (a rate), but to assess the fact that the result of the formula used by Quebec was an *ex post facto* rate which in Canada's opinion was not a valid means of showing an increase legislated by the SAQ to increase its mark-up.

[149] In the view of Quebec and of the Court, this admission by Ms. Daigneault was a change of direction by Canada, with an important impact on the issue as formulated by Hugessen J.,

based on the representations made to him by the parties. This is clear in view of Canada's memorandum submitted to Hugessen J. that the question of whether the SAQ mark-up should be expressed in dollars was fundamental. This was the understanding on which the expert witnesses Levine and Bussière also prepared their reports and testified. The Court accepts the testimony of Ms. Daigneault, Canada's representative, on this point and sees no reason to consider the argument between the two expert witnesses any further.

[150] Exhibit P-12 is an extract from the minutes of the meeting of the SAQ Board of Directors on November 8, 1990 on the structure of the increased rates that would be in place on January 1, 1991 in connection with the introduction of the GST. The members of the Board of Directors decided that the mark-up structure of products sold by the SAQ should be amended as of January 1, 1991 in accordance with the principle developed in scenario 2 of the document titled [TRANSLATION] "Mark-up Structure Relating to GST".

[151] Exhibit P-12 was admitted without prejudice pending the Court's decision on whether new evidence which was not before the decision-maker was admissible in the proceeding brought by Quebec against Canada under section 19 of the *Federal Courts Act*. For the reasons given earlier on the preliminary question, I conclude that Exhibit P-12 is admissible.

[152] Exhibit P-12 shows that before January 1, 1991 the SAQ Board of Directors had decided by resolution on a new mark-up structure to maintain retail sales prices and the ability to generate the anticipated dividend following the introduction of the GST, which caused the base price of each product sold by the SAQ to fall.

[153] The SAQ mark-up is the result of its mark-up structure, which applies product by product to the base price of each product, the components of which are the price paid to the supplier, transport costs, customs, excise duties, federal sales taxes (FST of 19% before 1991 and GST of 8% in that year) and other costs.

[154] To maintain retail prices following elimination of the 19% FST, an important component of the base price, the SAQ altered by resolution of its board of directors the two portions which were responsible for its profits: an increase in its standard mark-up by bottle and changes in the segments and rates of its *ad valorem* mark-up.

[155] Ms. Daigneault testified on January 6, 2005 (transcript, p. 270) that Exhibit P-12, which had not been given to Canada when the application was analysed, indicated a deliberate action by Quebec to increase the mark-up on products sold by it to the public.

[156] I feel that Quebec is entitled to the declaration sought.

[157] I have two further comments to make. First, I make no ruling on the quantum of the financial impact of the adjustment which the Minister must make in order to reflect the increase in the SAQ mark-up during the 1991-1992 fiscal year. Determining the financial impact is the responsibility of the Minister, who must take into account all relevant factors so as to properly assess what the real revenue from this revenue source would have been if the increase in the 1991-1992 mark-up had not occurred. In this context, I do not have to weigh the arguments of

Canada that for certain products the increase in the margin is volumetric in nature and in other cases the percentage increase is low.

[158] Secondly, the evidence was that Canada requested certain information from Quebec which the latter did not provide.

[159] Messrs. St. Gelais and Monty explained why the information requested was not given to Canada. The Court accepts their testimony. Quebec could not provide these explanations because there was no increase in the dollar mark-up and the price of the products did not change. In my opinion, this is readily understandable; Mr. Hodgson insisted that the mark-up should be expressed in dollars. There was no mutual understanding on this point. In this context, I place no blame on Quebec.

10.6 Item (e) – Loto-Québec mark-up

[160] The declaration sought by Quebec is :

> **DECLARE THAT** the increased mark-up of the Société des loteries et courses du Québec for the 1991-1992 fiscal year is an increase in the mark-up on goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(viii) of the *1987 Regulations* which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year . . .

[161] The question framed by Hugessen J. is:

[TRANSLATION]

Did the Minister make a reviewable error in his determination:

> (*e*) That the increased mark-up rate of the Société des loteries et courses du Québec (Loto-Québec) for the 1991-1992 fiscal year is not an increase in the mark-up of goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*b*)(viii) of the Regulations for the 1991-1992 fiscal year . . .

[162] Under sections 4(2)(*ee*) and 6(1)(*b*) of the *Act*, lottery revenue received by a province is included in the province's revenue subject to stabilization. Accordingly, Quebec included this revenue in its application, but made an adjustment for the 1991-1992 fiscal year. Quebec deducted the sum of $11,972,637 which it determined was the impact of the change made by the province to one of its modes of raising revenue, in this case the increase in the mark-up on lottery tickets sold to the public by Loto-Québec. The Minister did not take this adjustment into account since, in his opinion, only the Loto-Québec mark-up rate had increased, and this did not correspond to an increase within the meaning of subparagraph 12(1)(*b*)(viii) of the *Regulations*. In the Minister's submission, the evidence presented by Quebec was insufficient to determine whether there had been an increase in the mark-up or even to assess the financial impact of such an increase, if applicable.

[163] Quebec argued that like the issue involving the SAQ, the chief question to be decided by the Court concerned interpretation of the word "mark-up" in subparagraph 12(1)(*b*)(viii) of the *Regulations*.

[164] Quebec argued that, expressed as a percentage of the cost of sales, its mark-up increased in 1991-1992 over the previous year. Loto-Québec calculated its mark-up in the same way as the SAQ, by dividing gross profit by cost of sales for the same year. Loto-Québec can deliberately increase its gross profit, *inter alia* by marketing lottery tickets which have a lower rate of return (the rate of return is fixed in the form of a percentage of the ticket selling price, which corresponds to the prizes paid to winners); by downward alteration of discounts to retailers, although that is not often done; or by decreasing the printing quality of lottery tickets or the size of tickets. A decrease in the rate of return has the effect of improving the gross profit, and so indirectly influences the mark-up as calculated by Loto-Québec. In Quebec's submission, the meaning of the word "mark-up" in subparagraph 12(1)(*b*)(viii) of the *Regulations* is broad enough to include the increase in the mark-up rate on goods sold to the public by a governmental enterprise.

[165] Quebec submitted that it deliberately took measures to increase its mark-up, as calculated above, between the two years in question. In 1991-1992 Loto-Québec introduced an expense reduction program, as part of which it marketed lottery tickets with a lower structure and rate of return in order to improve its performance. Accordingly, Loto-Québec sales increased 3.3 percent between the two years in question, while the cost of prizes fell 2.8 percent. The Loto-Québec mark-up rate consequently increased from 81 percent in 1990-1991 to 82.8 percent in 1991-1992. The amount of $11,972,637 is the result of the calculation that involves applying the 1990-1991 mark-up rate to revenue for the 1991-1992 fiscal year so as to compare revenue subject to stabilization within a constant fiscal structure. If not for the increase in its mark-up rate

in 1991-1992, therefore, Loto-Québec considered that it would have sustained a decrease in revenue of $11,972,637.

[166] At trial, Quebec submitted new evidence without prejudice, Exhibit P-20, which brought together a number of documents including:

- A table titled [TRANSLATION] “cumulative sales and prizes by type of Loto-Québec lottery, 1990-1991 and 1991-1992”;
- Extracts from the minutes of the Loto-Québec board of directors in 1991 and early 1992 regarding changes to its lotteries, including extracts from the memorandum of deliberations and the operations policy applicable to each lottery (prize structure, prize amounts, number of prizes and chances of winning).

[167] As with the position taken on the issue relating to the SAQ, Canada maintained that Quebec had simply shown that the mark-up rate as calculated *a posteriori* had increased. This does not indicate whether there was a change by the province in the mark-up which it applied to goods within the meaning of section 12(1)(*b*)(viii) of the *Regulations*, as by reducing the rate of return on prizes, for example, or assessing the financial impact of such a change, if applicable.

[168] The mark-up rate calculated *ex post facto* may be affected by several items other than a change made by the province to the mark-up applied to goods. For example, consumer habits and sales change from year to year, as well as the popularity of a particular game and the variations in what the prize payouts happen to be. These factors influence the profit rate achieved by Loto-

Québec at the end of the year, without this being due to any specific, deliberate measure taken by the province to this effect.

[169] Accordingly, in Canada's submission even the new evidence (Exhibit P-20) is insufficient to determine whether there was in fact an increase in mark-up: in order to do this, Quebec would have had to submit evidence showing the rate of return on each category of lottery game for 1991-1992, and also for 1990-1991. With the information in fact supplied, namely the rate of return by lottery for 1991-1992 only, no comparison was possible.

[170] The question for Loto-Québec was similar to that of the SAQ, since to show the increase in that agency's mark-up Quebec had used the formula of sales value less the cost of sales (gross profit) divided by the cost of sales. Canada considered that the weaknesses of this formula were the same as those noted for the SAQ, and that consequently Loto-Québec had not established that its mark-up had increased during the year of the application: Quebec had only shown a change in an *ex post facto* rate. Canada also alleged that the Quebec record lacked information.

[171] It follows that the conclusions made by this Court for the SAQ apply to Loto-Québec, in particular:

- The question of whether an increase in the mark-up should be expressed in dollars, not as a percentage, became moot during the testimony of Ms. Daigneault;

- The new evidence is admissible: Quebec's remedy under section 19 of the *Federal Courts Act* is not judicial review of the Minister's decision, but a dispute between the parties which this Court must resolve on the merits based on the evidence submitted by each party;
- Exhibit P-20 showed that for each lottery identified there was an *a priori* intention by the Loto-Québec board of directors to increase the mark-up on each product before the product was sold to the public.

[172] Canada made another point. It said that Quebec's application was deficient for lack of information. I dismiss this argument. The evidence was that Canada did not ask the Quebec representatives to give it any further information.

[173] For these reasons, Quebec is entitled to the declaration sought.

10.7 Item (c) – Fiscal Reciprocity Protocol of Agreement

[174] The declaration sought by Quebec is:

> **DECLARE THAT** the revenue decrease from the retail sales tax for the 1991-1992 fiscal year which results from the coming into force on January 1, 1991 of the protocol on fiscal reciprocity signed between Canada and Quebec on December 21, 1990 and is not a change made by Quebec in the structure of a mode of raising revenue of the province within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*a*) of the *1987 Regulations* [and] should be taken into account by the Minister of Finance of Canada in calculating the revenue subject to stabilization for that fiscal period . . .

[175] The question stated by Hugessen J. is:

> [TRANSLATION]
>
> Did the Minister make a reviewable error in his determination:
>
> (c) That the revenue decrease from the retail sales tax for the 1991-1992 fiscal year resulting from the coming into force on January 1, 1991 of the Protocol on Fiscal Reciprocity between Canada and Quebec signed on December 21, 1990 results from a change made by Quebec in the structure of a mode of raising revenue of the province within the meaning of section 6(1)(*b*) of the Act and section 12(1)(*a*) of the Regulations for the 1991-1992 fiscal year. Is the defendant right in arguing, alternatively, that the province's revenue from a fiscal reciprocity agreement is not revenue subject to stabilization?

[176] In its application for a stabilization payment for the 1991-1992 fiscal year, Quebec sought to take into account the decrease in its revenue from the QST by the amount of $36,456,000 resulting from cancellation of the 1987 Canada-Quebec fiscal reciprocity agreement (the 1987 agreement), which was replaced by the fiscal reciprocity protocol of agreement dated December 21, 1990 (the 1990 agreement) in effect on January 1, 1991, the date the GST was introduced.

[177] The Minister refused to recognize the adjustment made by Quebec on the ground that revocation of the 1987 agreement, the cause of the decrease in revenue from the QST, was the result of a change made by Quebec within the meaning of the *Act* and *Regulations*.

[178] Under the 1987 agreement, which was for five years, Canada undertook to remit to the Government of Quebec the QST on purchases made by its departments and designated Crown

corporations as if the QST [TRANSLATION] “applied to Canada”. Quebec, in return, undertook to remit to Canada the FST from its purchases and those of its designated Crown corporations.

[179] The need for fiscal reciprocity agreements between Canada and the provinces results from the fiscal immunity which both levels of government enjoy under section 125 of the *Constitution Act, 1867* from being subject to taxation by the other level of government.

[180] The expiry date of the 1987 agreement was March 31, 1992, subject to the following provisions:

> 1. Revocation of the 1987 agreement at the end of a fiscal year by either party on six months’ notice in writing;
>
> 2. Automatic revocation on the date of the introduction by Canada of a tax [TRANSLATION] “on commercial transactions or any other similar taxes promulgated to replace the tax due under the federal Act . . . as of the date of introduction of this tax on commercial transactions or any other similar taxes”; in the 1987 agreement, “federal Act” means the *Excise Tax Act* pursuant to which the FST was, and the GST would be, imposed;
>
> 3. The parties undertook to initiate discussions, at least six months before March 31, 1992 or before the date of introduction of a tax on commercial

> transactions or any other similar tax to replace the FST, with a view to concluding another agreement having a purpose similar to that of this agreement.

[181] As mentioned, the 1990 agreement replaced that of 1987. Canada and Quebec mutually agreed to exclude from their scope, on their purchases of goods, Canada's obligation to remit the QST to Quebec and Quebec's obligation to remit the GST to Canada.

[182] Quebec maintains that termination of the 1987 agreement and its replacement by the 1990 agreement was not a change made by Quebec in the structure of a mode of raising revenue for the province within the meaning of section 6(1)(*b*) of the *Act* and section 12(1)(*a*) of the *Regulations*.

[183] Underlying this argument by Quebec is the idea of fiscal immunity. Quebec could not unilaterally subject Canada to payment of the QST on purchases by Canada or its agencies in Quebec. Canada had to agree to pay it. In this particular situation, Quebec submitted that a fiscal reciprocity agreement is not a mode of raising revenue and that Canada's intention to no longer pay the QST was not a change made by the province.

[184] Canada put forward three defences to Quebec's arguments, as follows:

> 1. It was Quebec which asked that the automatic cancellation clause be added to the 1987 agreement if Canada introduced a tax similar to the GST imposed at the level of retail sales, thereby replacing the FST which manufacturers had to pay; in

Canada's submission, but for this clause desired by Quebec the 1987 agreement would have ended on March 31, 1992; the fact that it ended prematurely pursuant to the automatic cancellation clause was due to Quebec's action;

2. Revenue from the 1987 agreement was not revenue subject to stabilization;

3. The Minister's decision was consistent with the rule of fiscal reciprocity established in fiscal reciprocity agreements, a rule which requires that the Court recognize the fact that taxes payable by Quebec to Canada had decreased since Quebec was no longer paying the GST to Canada.

[185] For the following reasons, I reject Canada's arguments. It follows that Quebec is entitled to the declaration sought on this item.

[186] First, in my opinion a fiscal reciprocity agreement is not a mode of raising revenue within the meaning of section 12 of the Regulations because it cannot be implemented unilaterally or independently of Canada's wishes. All examples of modes of raising revenue given in section 12 of the Regulations indicate that the characteristic of sovereignty is essential to the concept. Quebec was incapable of collecting the QST from Canada. What is more, it does not matter whether Quebec asked that the automatic cancellation clause be inserted in the 1987 agreement. Regardless of that clause, the two parties had a duty to see whether a replacement solution was possible and this is what happened with the 1990 agreement.

[187] Secondly, revenue from fiscal agreements is classified by Statistics Canada as revenue from a [TRANSLATION] “general . . . purpose transfer payment received from other governments”. Canada acknowledged that the definition of this definition in section 5(1)(*ee*)(xvi) of the Regulations excludes a transfer payment from the definition of “miscellaneous provincial taxes and revenues”, and that consequently this revenue is not excluded from revenue subject to stabilization in section 6(1)(*b*) of the *Act*. However, Canada argued that revenue from reciprocity agreements was not covered by section 4(2) of the *Act*. Like Quebec, I feel that the source of revenue from the 1987 agreement is the sales tax to which paragraph 4(1)(*d*) of the *Act* applies.

[188] Thirdly, the fiscal reciprocity principle as a principle of interpretation has no application to provincial revenue stabilization payments, for two reasons. Canada acknowledged that there is no reason to adjust a province’s real revenue for fiscal changes made by Canada. Second, the purpose of the Program is to offset a province’s decreases in revenue regardless of what a province may pay to Canada in reciprocity.

10.8 – Item (d) – Interest income on personal and corporate income tax

[189] The declaration sought by Quebec is:

> **DECLARE THAT** the decrease in interest revenue received by Quebec on taxes levied on personal income and corporate income, which are a source of revenue within the meaning of section 4(2)(*a*) and (*b*) of the *Fiscal Arrangements Act* and are not covered by the definition of “miscellaneous revenue” set out in section 4(2)(*ff*) of the *Fiscal Arrangements Act* and section 5(1)(*ee*)(viii) of the *1987 Regulations,* should be taken into account by the Minister of Finance of Canada in calculating the revenue subject to stabilization for the 1991-1992 fiscal year . . .

[190] The issue stated by Hugessen J. is:

> [TRANSLATION]
>
> Did the Minister make a reviewable error in his determination:
>
> (d) That the interest revenue received by Quebec on taxes levied on personal income and corporate income, is not a source of revenue within the meaning of section 4(2)(*a*) and (*b*) of the Act and is covered by the definition of "miscellaneous revenue" set out in section 4(2)(*ff*) of the Act and section 5(1)(*ee*)(viii) of the Regulations, which should not be taken into account by the Minister of Finance of Canada in calculating the income subject to stabilization for the 1991-1992 fiscal year? [Emphasis added]

[191] Most of all, section 6(2)(*a*) of the *Act* is relevant in defining " 'revenue subject to stabilization' of a province":

> 6. (2) With respect to a fiscal stabilization payment for a fiscal year that begins after March 31, 1987, in this section, "revenue subject to stabilization" of a province for a fiscal year means, in the case of the fiscal year beginning on April 1, 1986 and a fiscal year beginning on or after April 1, 1987, the aggregate of
>
> (*a*) the total revenues, as determined by the Minister, derived by the province for the fiscal year from the revenue sources described in the definition "revenue source" in subsection 4(2), other than the revenue sources described in paragraphs (*dd*) and (*ff*) of that definition . . . [Emphasis added]

[192] Section 4(2)(*a*), (*b*) and (*ff*) of the *Act* reads as follows:

> 4. (2) In this section,
>
> "revenue source" means any of the following sources from which provincial revenues are or may be derived:
>
> (*a*) personal income taxes;

> (*b*) corporation income taxes, revenues derived from government business enterprises that are not included in any other paragraph of this definition, and revenues received from the Govermnent of Canada pursuant to the *Public Utilities Income Tax Transfer Act*. . .
>
> (*ff*) miscellaneous provincial taxes and revenues including miscellaneous revenues from natural resources, concessions and franchises, sales of provincial goods and services and local government revenues from sales of goods and services and miscellaneous local government taxes . . .

[193] Section 5(1)(*ee*)(vii) of the *Regulations* expands on section 4(2)(*ff*) of the *Act* and reads as follows:

> 5. (1) For the purposes of the Act, the expressions referred to in paragraphs (*a*) to (*cc*) of the definition "revenue source" in subsection 4(2) of the Act are defined as follows . . .
>
> (*ee*) "miscellaneous provincial taxes and revenues including miscellaneous revenues from natural resources, concessions and franchises, sales of provincial goods and services and local government revenues from sales of goods and services and miscellaneous local government taxes" means revenues derived from sales of goods and services by local governments and local government taxes, including interest charges, fines and penalties imposed in respect of those taxes, other than the revenues derived from taxes or grants described in paragraph (*cc*), and revenues derived from taxes or grants described in paragraph (*cc*), and revenues derived by a province from any source other than a source described elsewhere in this subsection and, for greater certainty, includes . . .
>
> (vii) revenues derived from the imposition by the province of interest charges, fines and penalties in respect of taxes and any other charges and from the imposition by the province of any other interest charges, fines and penalties, other than those imposed in respect of the sources described in subparagraphs (x) to (xvi) . . . [Emphasis added]

[194] Additionally, section 13(1)(*c*) of the *Regulations* is also relevant for consideration of this issue:

> 13. (1) For the purposes of this Part, the total revenue derived by a province for a fiscal year from the revenue sources set out in the definition "revenue source" in subsection 4(2) of the Act is . . .

> (*c*) . . . the amount as determined by the Minister based on the information made available to the Minister by the province in its application, as adjusted if necessary by the Minister, and in the certificate submitted to the Minister by the Chief Statistician of Canada in accordance with subsection 9(2). [Emphasis added]

[195] Finally, subsection 9(2) of the *Regulations* read as follows:

> 9. (2) The Chief Statistician of Canada shall, in respect of each fiscal year in the fiscal arrangements period, prepare and submit to the Minister, not later than 23 months following the end of that fiscal year, a certificate in respect of that fiscal year based on the most recent information that has been prepared by Statistics Canada for that fiscal year, setting out
>
> > (*a*) the revenue from each revenue source set out in the definition "revenue source" in subsection 4(2) of the Act for each province for the fiscal year . . .

[196] Unlike the other items at issue, this involves Quebec's disagreement with the classification of revenue subject to stabilization determined by the Minister.

[197] In its calculation of revenue subject to stabilization for 1991-1992 Quebec, pursuant to the provisions of sections 4(2)(*a*) and 6(4) and (5) of the *Act*, included revenue from interest assessed on personal and corporate taxes due to a shortfall of $20,429,000 in 1991-1992 from the previous year.

[198] In particular, subsections 6(4) and (5) provide that for sources of personal and corporate tax deemed for the application of subsection 4(2) correspond to the total amount determined in prescribed manner of provincial personal income taxes assessed or reassessed not later than

twenty-four months after the end of the fiscal year, in respect of the taxation year ending in that year, less certain adjustments which are not relevant here.

[199] The Minister refused to take this decrease in interest revenue into account, as this interest revenue was not included in tax revenue assessed or reassessed, but was miscellaneous revenue excluded from calculation of revenue subject to stabilization as required by paragraph 6(1)(*b*) of the *Act*, which is an exception to paragraph 4(2)(*ff*) of that *Act* and subsection 5(2) of the *Regulations*, in particular miscellaneous provincial revenue and taxes, and specifically in paragraph (vii) revenue derived from the imposition of interest charges, fines and penalties by the province in respect of taxes and any other charges.

[200] In Quebec's submission, the context is important because it collects personal and corporate income tax itself and must bear the risk of bad debts by itself, unlike other provinces which are governed by a collection agreement with Canada, under which the federal government pays the provinces the taxes assessed, and even if the taxpayers have not paid their taxes by the due date, the federal government assumes the risk of bad debts, but in return if it collects the taxes it retains the interest and penalties paid.

[201] Four main arguments were made by Quebec in support of its position. First, Quebec submitted that under the Quebec *Taxation Act* interest is an integral part of personal income tax (section 1039). Accordingly, Quebec argued that it is covered by section 4(2)(*a*) and (*b*) of the *Act* and constitutes part of revenue subject to stabilization.

[202] This argument was based on the provincial classification of the concepts of taxes and interest on taxes. I do not feel that this provincial classification is in any way relevant for the purposes of applying the Program. What is important is the way in which the federal legislation classifies this revenue, as being included or excluded from revenue subject to stabilization.

[203] Thus, Quebec's second argument was that even in the *Fiscal Arrangements Act*, the definitions of revenue from personal and corporate tax found in section 6(4) and (5) of the *Act* are broad enough to include interest paid on the said taxes. As it is related, I will deal with this argument in the context of the third argument made by Quebec.

[204] Thirdly, Quebec contended that the definition of "miscellaneous revenues" in section 5(1)(*ee*)(vii) of the *Regulations* applies only to interest on miscellaneous provincial taxes, such as taxes on gifts, and not interest on personal and corporate income tax. It is clear from reading the phrase "including interest charges, fines and penalties imposed in respect of those taxes" in the introductory paragraph of paragraph 5(1)(*ee*) that it applies only to interest relating to taxes levied by local governments.

[205] Nevertheless, paragraph 5(1)(*ee*) applies to revenue which a province derives from a source not mentioned in the paragraph, including revenue from interest, fines and penalties in respect of taxes and other charges. The English text is more clearly worded, stating that "miscellaneous taxes and revenues . . . means . . . and revenues from any source other than the source described elsewhere in this subsection and for greater certainty includes . . . revenues

derived from the imposition by the province of interest, fines and penalties in respect of taxes and any other charges".

[206] In my view, there is no ambiguity in the *Regulations*. Parliament's intention was to include in the provincial miscellaneous revenue base revenue from interest derived from all taxes. The concepts of taxes assessed and interest assessed are separate, leading to the conclusion that for the purposes of the Program taxes assessed do not cover interest on those taxes.

[207] That said, the Court comes to the same conclusion as the Chief Statistician of Canada on this point.

[208] Finally, Quebec submitted that the interpretation of the *Act* and *Regulations* adopted by the Minister is unfair in view of the special situation of Quebec in the collection of taxes. This argument must be rejected: the fact that Quebec is not a party to tax collection agreements is an extrinsic factor resulting from a decision within Quebec's prerogative. Quebec's special situation clearly cannot be relied on to alter the *Act* and *Regulations*.

[209] Quebec is not entitled to the declaration sought. In the circumstances, it is not worth analysing the alternative arguments.

10.9 Item (f) – Governmental enterprise revenue: SOQUIA

[210] The declaration sought by Quebec is:

> **DECLARE THAT** revenue from the Société québécoise d'initiatives agro-alimentaires (SOQUIA) is revenue from a business enterprise within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 5(1)(*b*)(ii) of the *1987 Regulations* which the Minister of Finance should take into account in calculating revenue subject to stabilization for the 1991-1992 fiscal year . . .

[211] The question framed by Hugessen J. is:

> [TRANSLATION]
>
> Did the Minister make a reviewable error in his determination:
>
> (f) That the revenue from the Société québécoise d'initiatives agro-alimentaires (SOQUIA) is not revenue from a business enterprise within the meaning of section 6(1)(*b*) of the Act and section 5(1)(*b*)(ii) of the Regulations for the 1991-1992 fiscal year?

[212] Section 5(1)(*b*)(ii) of the Regulations reads:

> 5. (1) For the purposes of the Act, the expressions referred to in paragraphs (*a*) to (*ff*) of the definition "revenue source" in subsection 4(2) of the Act are defined as follows . . .
>
> (*b*) "corporation income taxes, revenues derived from government business enterprises that are not included in any other paragraph of this definition, and revenues received from the Government of Canada pursuant to the *Public Utilities Income Tax Transfer Act*" means . . .
>
> (ii) remittances to a provincial government of profits of the business enterprises of the province, other than
>
> (A) a liquor board . . .
>
> (C) an enterprise, board, commission or authority engaged in the administration of a provincial lottery . . . [Emphasis added]

[213] Subparagraph 5(1)(*ee*)(vi) [is] also relevant for analysis of this item at issue:

> 5. (1) For the purposes of the Act, the expressions referred to in paragraphs (*a*) to (*ff*) of the definition "revenue source" in subsection 4(2) of the Act are defined as follows . . .
>
> (ee) "miscellaneous provincial taxes and revenues including miscellaneous revenues from natural resources, concessions and franchises, sales of provincial goods and services and local government revenues from sales of goods and services and miscellaneous local government taxes" means revenues derived from sales of goods and services by local governments and local government taxes, including interest charges, fines and penalties imposed in respect of those taxes, other than the revenues derived from taxes or grants described in paragraph (*cc*), and revenues derived by a province from any source other than a source described elsewhere in this subsection and, for greater certainty, includes . . .
>
> (vi) revenues derived from sales of goods and services by the province and revenues classified by Statistics Canada as institutional sales of goods and services, other than taxes included in those revenues . . .

[214] Under subparagraph 5(1)(*b*)(ii) of the *Regulations* pursuant to paragraph 4 of the *Act*, remittances to a provincial government of profits of the business enterprises of the province are a source of revenue subject to stabilization.

[215] Quebec therefore included the sum of $3,000,000 in its stabilization payment application for the decreased dividend received from SOQUIA in 1991-1992 as compared with that in 1990-1991.

[216] The Minister did not take this decrease from this source into account because he determined that SOQUIA profits were classified by Statistics Canada as "miscellaneous provincial revenue" mentioned in paragraph 4(2)(*ff*) of the *Act* and subparagraphs 5(2)(*ee*)(vi) and (ix) of the *Regulations*, and thus specifically excluded from the revenue subject to stabilization on which a stabilization payment is based under section 6(1) and (2)(*a*) of the *Act*.

[217] The question raised by this item is whether the Minister was justified in considering the SOQUIA dividends as miscellaneous provincial revenue excluded from revenue subject to stabilization on the ground that they were classified by Statistics Canada as revenue from a special non-commercial fund administered by the Government of Quebec itself.

[218] In order to assess the parties' positions, I note that the evidence established the following facts:

1. The basis of the classification system by Statistics Canada between governmental enterprises and the world of governmental institutions is the Financial Management Manual created pursuant to the parameters of the financial management system;

2. SOQUIA was incorporated by a special statute of the Quebec National Assembly in 1975: its first function was to contribute to the development of the bio-food industry by injection of risk capital or some other form of investment in private business enterprises;

3. In 1978 the Statistics Canada classification committee, based on information that it had, classified SOQUIA as a special fund and not as a commercial corporation, a decision which Quebec did not challenge;

4. When Canada considered Quebec's application for a stabilization payment, SOQUIA was still classified by Statistics Canada as a special fund and not a business enterprise;

5. Canada was notified by Quebec during analysis of the Quebec application that the Quebec Bureau de la Statisque had made an application to Statistics Canada to change the SOQUIA classification to a business enterprise. However, it was not until 1976 that Statistics Canada decided to classify SOQUIA as a business enterprise.

[219] Quebec's argument is based primarily on two essential points. Quebec sought first to establish that SOQUIA is a government business enterprise; second, that the Minister was not justified in relying solely on the classification of SOQUIA by Statistics Canada without considering the actual nature of SOQUIA's activities, based on the information provided by Quebec regarding its activities.

[220] I feel that Quebec's two arguments must be dismissed. The purpose of section 5 of the *Regulations* is to define and give substance to the concept of "miscellaneous provincial revenue and taxes". In subparagraph 5(1)(*ee*)(vi) of the *Regulations*, Parliament clearly stated that "revenues classified by Statistics Canada as institutional sales of goods and services" should be treated as miscellaneous provincial revenue. That was the case with SOQUIA in 1994 when the Quebec application was considered.

[221] Quebec maintained that the SOQUIA revenue does not fall under the definition of miscellaneous provincial revenue, since the definition of miscellaneous revenue in section 5(1)(*ee*) of the *Regulations* specifies that miscellaneous revenue is revenue derived by a province from any source other than a source described elsewhere in section 5, and this was not the case, since revenue from a provincial business enterprise is mentioned in subparagraph 5(1)(*b*)(ii).

[222] I cannot accept this argument since it is contrary to the scheme of section 5 of the *Regulations*. Under that section, if SOQUIA was classified as a special fund, and so a provincial institution, it could not be regarded as a business enterprise by definition because section 5(1)(*ee*) states that revenue classified by Statistics Canada in paragraph (vi) comes from a source not mentioned in section 5(1)(*ee*).

[223] This interpretation is consistent with the purpose of section 5. As the testimony at trial showed, classification questions are complex. Parliament intended that the question of miscellaneous provincial revenue from a provincial administration be decided by Statistics Canada, a decision on which the Minister’s representatives could rely.

[224] Consequently, Quebec is not entitled to the declaration sought.

JUDGMENT

[1] Quebec is entitled to the following declarations:

1. **THAT** the legislative amendment made by Quebec by adoption of the *Act to Amend the Retail Sales Tax Act and other fiscal legislation*, S.Q. 1990, c. 60, to enable the QST to be applied to the GST, is a change made by Quebec to its fiscal structure within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(i) of the *1987 Regulations*, which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year;

2. **THAT** the increased mark-up of the Société des alcools du Québec (SAQ) for the 1991-1992 fiscal year is an increase in the mark-up on goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(viii) of the *1987 Regulations* which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year;

3. **THAT** the revenue decrease from the retail sales tax for the 1991-1992 fiscal year which results from the coming into force on January 1, 1991 of the protocol on fiscal reciprocity between Canada and Quebec signed on December 21, 1990 is not a change made by Quebec in the structure of a mode of raising revenue of the province within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*a*) of the *1987 Regulations* [and] should be taken into account by the Minister of Finance of Canada in calculating the revenue subject to stabilization for that fiscal period;

4. **THAT** the increased mark-up of Loto-Québec for the 1991-1992 fiscal year is an increase in the mark-up of goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Fiscal Arrangements Act* and section 12(1)(*b*)(viii) of the *1987 Regulations*, which the Minister of Finance of Canada should take into account in calculating the stabilization payment application by the Government of Quebec for the 1991-1992 fiscal year;

5. **THAT** the Minister of Finance of Canada must take the findings of this Court on the questions submitted into account in considering the Government of Quebec's application for a stabilization payment;

6. WITH COSTS.

[2] The answers to the questions at issue are the following:

1. What is the standard of review applicable to judicial review of the Minister's decision to reject the application by Quebec for stabilization payments made pursuant to the *Act* and *Regulations* for the fiscal year 1991-1992?
Reply: this question is moot since the action at bar is not a judicial review.

2. Did the Minister make a reviewable error in his findings regarding each of the six items at issue in the case at bar? Namely:

(a) that the adoption of the *Act to Amend the Retail Sales Tax Act and other fiscal legislation* to enable the Quebec Sales Tax (QST) to be applied to the Goods and Services Tax (GST), is not a change made by Quebec to its fiscal structure within the meaning of section 6(1)(*b*) of the *Act* and section 12(1)(*b*)(i) of the *Regulations* for the 1991-1992 fiscal year;
Reply: yes.

(b) that the increased mark-up of the Société des alcools du Québec (SAQ) for the 1991-1992 fiscal year is not an increase in the mark-up on goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Act* and section 12(1)(*b*)(viii) of the *Regulations* for the 1991-1992 fiscal year;
Reply: this Court sees no need to answer this question since the Minister's representative admitted that the SAQ mark-up could be expressed as a percentage or in dollars in accordance with a decision by that agency made before the goods were sold.

(c) that the revenue decrease from the retail sales tax (QST) for the 1991-1992 fiscal year resulting from the coming into force on January 1, 1991 of the Protocol

on Fiscal Reciprocity between Canada and Quebec signed on December 21, 1990 results from a change made by Quebec in the structure of a mode of raising revenue of the province within the meaning of section 6(1)(*b*) of the *Act* and section 12(1)(*a*) of the *Regulations* for the 1991-1992 fiscal year. Is the defendant right in arguing, alternatively, that the province's revenue from a fiscal reciprocity agreement is not revenue subject to stabilization?

Reply: yes.

(d) that the interest revenue received by Quebec on taxes levied on personal income and corporate income is not a revenue source within the meaning of section 4(2)(*a*) and (*b*) of the *Act* and is covered by the definition of "miscellaneous revenue" set out in section 4(2)(*ff*) of the *Act* and section 5(1)(*ee*)(vii) of the *Regulations*, which should be taken into account by the Minister of Finance of Canada in calculating the province's revenue subject to stabilization for the 1991-1992 fiscal year;

Reply: no.

(e) that the increased mark-up rate of the Société des lotteries et courses (Loto-Québec) for the 1991-1992 fiscal year is not an increase in the mark-up of goods sold to the public by that agency within the meaning of section 6(1)(*b*) of the *Act* and section 12(1)(*b*)(viii) of the *Regulations* for the 1991-1992 fiscal year;

Reply: this Court sees no need to answer this question since the Minister's representative admitted that the Loto-Québec mark-up could be expressed as a

percentage or in dollars in accordance with a decision by that agency made before the goods were sold.

(f) that the revenue from the Société québécoise d'initiatives agro-alimentaires (SOQUIA) is not revenue from a business enterprise within the meaning of section 6(1)(*b*) of the *Act* and section 5(1)(*b*)(ii) of the *Regulations* for the 1991-1992 fiscal year;

Reply: no.

"François Lemieux"
Judge

Certified true translation

Brian McCordick, Translator

APPENDIX A

A. Act

Part II is entitled “Fiscal Stabilization Payments to Provinces”. The versions of sections 4, 5 and 6 applicable at March 31, 1992 read:

Fiscal stabilization payment	**Paiements de stabilization**
5. Subject to this Act, the Minister may pay to a province, for each fiscal year that begins after March 31, 1987, a fiscal stabilization payment not exceeding the amount computed in accordance with section 6.	5. Sous réserve des autres dispositions de la présente loi, le ministre peut verser à une province, pour chaque exercice commençant après le 31 mars 1987, un paiement de stabilisation ne dépassant pas le montant calculé en conformité avec l'article 6.
R.S., 1985, c. F 8, s. 5; R.S., 1985, c. 11 (3rd Supp.), s. 4.	L.R. (1985), ch. F-8, art. 5; L.R. (1985), ch. 11 (3e suppl.), art. 4.
6(1) Computation of payments	6(1) Calcul des paiements
6. (1) Subject to subsections (8) to (10), the fiscal stabilization payment that may be paid to a province for a fiscal year is the amount, if any, as determined by the Minister, by which	6. (1) Sous réserve des paragraphes (8) à (10), le paiement de stabilisation qui peut être fait à une province pour un exercice est l'excédent, déterminé par le ministre:
(*a*) the revenue subject to stabilization of the province for the immediately preceding fiscal year	a) du revenu sujet à stabilisation de la province pour l'exercice précédent
exceeds	sur
(b) the revenue subject to stabilization of the province for the fiscal year, adjusted in prescribed manner to offset the amount, as determined by	b) le revenu sujet à stabilisation de la province pour l'exercice, corrigé de la manière prescrite de façon à compenser toute variation, déterminée par le ministre, du revenu sujet à stabilisation de la province pour l'exercice résultant de changements faits par la province dans les taux

the Minister, of any change in the revenue subject to stabilization of the province for the fiscal year resulting from changes made by the province in the rates or in the structures of provincial taxes or other modes of raising the revenue of the province referred to in paragraphs (a) to (cc) and (ee) of the definition “revenue source” in subsection 4(2) from the rates or structures in effect in the immediately preceding fiscal year.

6(1.1) Interpretation

(1.1) Where a province has entered into a tax collection agreement respecting either personal income tax or corporation income tax, a change to the Income Tax Act affecting, as the case may be, the amount defined as being “tax otherwise payable under this Part”, within the meaning assigned to that expression by subsection 120(4)(c) of the Income Tax Act, or corporate taxable income within the meaning of that Act shall be deemed to be a change in the rates or in the structures of provincial taxes for the purposes of paragraph (1)(b).

6(2) Definition of “revenue subject to stabilization”

(2) With respect to a fiscal stabilization payment for a fiscal year that begins after

ou la structure soit des impôts provinciaux soit des autres mécanismes de prélèvement du revenu de la province qui correspond aux alinéas a) à cc) et ee) de la définition de *source de revenu+ au paragraphe 4(2)…. par rapport aux taux ou à la structure applicables à l'exercice précédent.

6(1.1) Règle d'interprétation

(1.1) Dans le cas des provinces qui ont conclu un accord de perception fiscale soit sur le revenu des particuliers soit sur celui des personnes morales, une modification de la Loi de l'impôt sur le revenu qui touche, selon le cas, le montant défini comme étant l'*impôt qu'il est par ailleurs tenu de payer en vertu de la présente partie+, au sens du paragraphe 120(4) de la Loi de l'impôt sur le revenu, ou le revenu imposable, au sens de cette loi, des personnes morales est assimilée à un changement dans les taux ou la structure des impôts provinciaux pour l'application de l'alinéa (1)b).

6(2) Définition de *revenu sujet à stabilisation+

(2) Dans le cas d'un paiement de stabilisation qui peut être fait à une province pour un exercice commençant après le 31 mars 1987, au présent article, *revenu sujet à stabilisation+ d'une province pour un exercice s'entend, dans le cas de l'exercice commençant le 1er avril 1986 et d'un exercice commençant le 1er avril 1987 ou après cette

March 31, 1987, in this section, “revenue subject to stabilization” of a province for a fiscal year means, in the case of the fiscal year beginning on April 1, 1986 and a fiscal year beginning on or after April 1, 1987, the aggregate of
(a) the total revenues, as determined by the Minister, derived by the province for the fiscal year from the revenue sources described in the definition “revenue source” in subsection 4(2), other than the revenue sources described in paragraphs (dd) and (ff) of that definition, and
(b) the fiscal equalization payment to the province for the fiscal year under Part I.
….
6(2.2) Certain revenues excluded …
6(3) …
6(7) Application by province for payment
(7) A fiscal stabilization payment may be paid to a province for a fiscal year only on receipt by the Minister, not later than eighteen months after the end of the fiscal year, of an application by the province therefor containing such information as may be prescribed.
6(8) Limit of $60 per capita….
6(9) Loan

date, du total des montants suivants:
a) les revenus totaux, déterminés par le ministre, que la province retire pour l'exercice des sources de revenu mentionnées dans la définition de *source de revenu+ au paragraphe 4(2), à l'exception des sources de revenu visées aux alinéas dd) et ff) de cette définition;
b) le paiement de péréquation à la province pour l'exercice en vertu de la partie I.
c) …
(3) …
6(6) Limites dans le cas de certaines sources de revenu
….
6(7) Demande de paiement par la province
(7) Tout paiement de stabilisation ne peut être fait à une province pour un exercice que si le ministre reçoit de celle-ci, dans les dix-huit mois qui suivent la fin de l'exercice, une demande à cet effet contenant les renseignements qui peuvent être prescrits.
6(8) Limite de 60$ par habitant
….
6(9) Prêt …
6(10) Remboursement
…
L.R. (1985), ch. F-8, art. 6;
L.R. (1985), ch. 11 (3e suppl.),

….
6(10) Repayment
….R.S., 1985,

“Revenue source” is defined in section 4 of the Act as follows:

“revenue source”	« source de revenu »
“revenue source” means any of the following sources from which provincial revenues are or may be derived:	L'une des sources suivantes dont proviennent ou peuvent provenir les revenus des provinces:
(a) personal income taxes,	a) impôts sur le revenu des particuliers;
(b) corporation income taxes, revenues derived from government business enterprises that are not included in any other paragraph of this definition, and revenues received from the Government of Canada pursuant to the *Public Utilities Income Tax Transfer Act*	b) impôts sur le revenu des personnes morales et revenus retirés d'entreprises publiques non visées aux autres alinéas de la présente définition ….;
(c) taxes on capital of corporations,	c) impôts sur le capital des personnes morales;
(d) general and miscellaneous sales taxes, and amusement taxes,	d) taxes générales et diverses sur les ventes et impôts sur les spectacles et droits d'entrée;
(e) tobacco taxes,	e) taxes sur le tabac;
(f) motive fuel taxes derived from the sale of gasoline,	f) taxes sur les carburants retirées de la vente de l'essence;
(g) motive fuel taxes derived from the sale of diesel fuel,	g) taxes sur les carburants retirées de la vente du carburant diesel;
(h) non-commercial motor vehicle licensing revenues,	h) revenus provenant des permis et de l'immatriculation des véhicules à moteur non commerciaux;
(i) commercial motor vehicle licensing revenues,	i) revenus provenant des permis et de l'immatriculation des véhicules à moteur commerciaux;
(j) alcoholic beverage	

revenues derived from the sale of spirits;
(k) alcoholic beverage revenues derived from the sale of wine;
(l) alcoholic beverage revenues derived from the sale of beer;
(m) hospital and medical care insurance premiums,
(n) (repealed)
(o) race track taxes;
(p) forestry revenues,
(q) conventional new oil revenues,
(r) conventional old oil revenue,
(s) heavy oil revenues,
(t) mined oil revenues,
(u) domestically sold natural gas revenues,
(v) exported natural gas revenues,
(w) sales of Crown leases and reservations on oil and natural gas lands
(x) oil and gas revenues other than those described in paragraphs (q) to (w),
(y) metallic and non-metallic mineral revenues other than potash revenues,
(z) potash revenues
(aa) water power rentals,
(bb) insurance premium taxes,
(cc) payroll taxes,
(dd) provincial and local government property taxes,
(ee) lottery revenue,
(ff) miscellaneous provincial taxes and revenues including miscellaneous revenues from natural resources, concessions and franchises,

j) revenus retirés de la vente des spiritueux;
k) revenus retirés de la vente du vin;
l) revenus retirés de la vente de la bière;
m) primes d'assurance hospitalisation et d'assurance maladie;
n) (abrogé)
o) Taxes afférentes aux pistes de course;
p) revenus provenant des exploitations forestières;
q) revenus tirés du nouveau pétrole obtenu selon des méthodes classiques;
r) revenus tirés de l’ancien pétrole obtenu selon des méthodes classiques;
s) revenus tirés de pétrole lourd;
t) revenus tirés du pétrole obtenu par des opérations minières;
u) revenus provenant du gaz naturel vendu à l'intérieur du pays;
v) revenus provenant du gaz naturel exporté;
w) cessions des concessions de la Couronne et des droits de réserve sur les terrains recelant du pétrole ou du gaz naturel;
x) revenus provenant du pétrole et du gaz autres que ceux visés aux alinéas q) à w);
y) revenus provenant des minerais métalliques et non métalliques, à l’exception des revenus provenant de la potasse;

sales of provincial goods and services and local government revenues from sales of goods and services and miscellaneous local government taxes, and	z) revenus provenant de la potasse; aa) location d'énergie hydro-électrique; bb) impôts sur les primes d'assurance; cc) impôts sur la feuille de paie; dd) impôts immobiliers provinciaux et locaux; ee) revenus retirés de loteries; ff) revenus et impôts provinciaux divers, y compris les revenus divers provenant de ressources naturelles, de concessions et de franchises, de la vente de biens provinciaux et de la fourniture de services provinciaux et les revenus locaux provenant de la vente de biens et de la fourniture de services et des taxes locales diverses;

…

B. Regulations

Sections 5, 12, 13 and 17 of the Regulations read:

Revenue Source	**Source de revenu**
5. (1) For the purposes of the Act, the expressions referred to in paragraphs (a) to (cc) of the definition "revenue source" in subsection 4(2) of the Act are defined as follows:	5. (1) Pour l'application de la Loi, les expressions suivantes, mentionnées aux alinéas a) à cc) de la définition de "source de revenu", au paragraphe 4(2) de la Loi, sont définies de la façon suivante:
(a) "personal income taxes" means taxes imposed by a province on the income of individuals (i) … (ii) …	a)"impôts sur le revenu des particuliers" impôts levés par une province sur le revenu des particuliers qui: (i) … (ii) …
(b) "corporation income taxes, revenues derived from government business enterprises that are not included in any other paragraph of this definition, and revenues received from the Government of Canada pursuant to the Public Utilities Income Tax Transfer Act" means (i) taxes imposed by a province on the income of corporations earned in the province in a taxation year, but does not include taxes or revenues referred to in paragraphs (o), (x) and (y), (ii) remittances to a provincial government of profits of the business enterprises of the province, other than	b)« impôts sur le revenu des corporations, revenus retirés d'entreprises publiques non visées dans d'autres alinéas de la présente définition et revenus reçus du gouvernement du Canada conformément à la Loi sur le transfert de l'impôt sur le revenu des entreprises d'utilité publique »: (i)les impôts levés par une province sur le revenu gagné par les corporations dans la province au cours d'une année d'imposition, à l'exclusion des impôts ou revenus visés aux alinéas o), x) et y), (ii) les bénéfices remis à un gouvernement provincial par ses propres entreprises commerciales, à

	l'exception:
(A) a liquor board, commission or authority,	(A) des régies, commissions ou administrations des alcools,
(B) an enterprise engaged entirely or primarily in the marketing of oil or natural gas, and	(B)des entreprises qui se livrent entièrement ou principalement à la commercialisation du pétrole ou du gaz naturel,
(C) an enterprise, board, commission or authority engaged in the administration of a provincial lottery, and	(C) des entreprises, offices, commissions ou administrations chargés de gérer une loterie provinciale,
(iii) revenues received by a province from the Government of Canada pursuant to the Public Utilities Income Tax Transfer Act;	(iii)les revenus qu'une province reçoit du gouvernement du Canada conformément à la Loi sur le transfert de l'impôt sur le revenu des entreprises d'utilité publique;
(c)	c)…
(i) …	(i) …
(ii) …	(ii) …
(d) “general and miscellaneous sales taxes and amusement taxes” means taxes imposed by a province, and in the case of amusement taxes also includes those taxes imposed by a local government, on final purchasers or on users of goods and services that are not described elsewhere in this subsection and, for greater certainty, includes sales taxes on meals, hotel services, telecommunications and cable television;	d)"taxes générales et diverses sur les ventes et impôts sur les spectacles et droits d'entrée" taxes et impôts levés par une province, y compris, dans le cas des impôts sur les spectacles et droits d'entrée, ceux levés par les administrations locales, auxquels sont assujettis les acheteurs ultimes ou les utilisateurs de certains biens et services qui ne sont pas visés ailleurs dans le présent paragraphe; sont notamment visés par la présente définition les taxes de vente sur les repas, les services

	hôteliers, les télécommunications et les services de câblodistribution;
(e) …	e) …
(f)…	f) …
(g) …	g) …
(h) …	h) …
(i) …	i) …
(i) …	(i)…
(ii) …	(ii) …
(j) “alcoholic beverage revenues derived from the sale of spirits” means revenues derived by a province from	j) « revenus retirés de la vente des boissons alcooliques fortes » revenus qu'une province tire:
(i) remittances to the provincial government of profits of the liquor board, commission or authority of the province arising from sales of spirits,	(i) des bénéfices remis par la régie, commission ou administration des alcools de la province et provenant de la vente de boissons alcooliques fortes,
(ii) a specific sales tax imposed by the province on the sale of spirits by its liquor board, commission or authority, and	(ii) d'une taxe de vente spécifique levée par la province sur les boissons alcooliques fortes vendues par la régie, commission ou administration des alcools de la province,
(iii) fees for licences and permits for the privilege of distilling, purchasing or dispensing spirits;	(iii) des droits versés pour les licences et permis accordant le privilège de distiller, d'acheter ou de distribuer des boissons alcooliques fortes;
(k) “alcoholic beverage revenues derived from the sale of wine” means revenues derived by a province from	k)"revenus retirés de la vente du vin" revenus qu'une province tire:
(i) remittances to the provincial government of profits of the liquor board, commission or authority of the province arising from sales of wine,	(i)des bénéfices remis par la régie, commission ou administration des alcools de la province et provenant de la vente du vin,
(ii) a specific sales tax imposed by the province on the sale of wine by its liquor board, commission	(ii) d'une taxe de vente spécifique levée par la province sur le vin vendu

or authority, and	par la régie, commission ou
(iii) fees for licences and permits for the privilege of making, purchasing or dispensing wine;	administration des alcools de la province,
	(iii) des droits versés pour les licences et permis accordant le privilège de fabriquer, d'acheter ou de distribuer du vin;
(l) "alcoholic beverage revenues derived from the sale of beer" means revenues derived by a province from	l) « revenus retirés de la vente de la bière » revenus qu'une province tire:
(i) remittances to the provincial government of profits of the liquor board, commission or authority of the province arising from sales of beer,	(i)des bénéfices remis par la régie, commission ou administration des alcools de la province et provenant de la vente de bière,
(ii) a specific sales tax imposed by the province on the sale of beer by the liquor board, commission or authority of the province, and	(ii) d'une taxe de vente spécifique levée par la province sur la bière vendue par la régie, commission ou
(iii) fees for licences and permits for the privilege of brewing, purchasing or dispensing beer;	administration des alcools de la province,
	(iii) des droits versés pour les licences et permis accordant le privilège de brasser, d'acheter ou de distribuer de la bière;
(m) …	m) …
(n) …	n) …
(o) …	o) …
(p)	p) …
(q) …	q) …
(r) …	r) …
(s) …	s) …
(t) …	t) …
(u)	u) …
(v)	v) …
(w)	w) …
(x)	x) …
(y)	y) …
(z)	z)…
(aa) insurance premium taxes …	aa) « impôts sur les permis d'assurance »…
(bb) payroll taxes …	bb) « impôts sur la feuille

(cc) provincial and local government taxes…
(dd) "lottery revenues" means revenues derived by a province from
(i) remittances to the provincial government of profits of the business enterprises, boards, commissions or authorities of the province that carry on a provincial lottery or of business enterprises, boards, commissions or authorities jointly owned by the province and one or more other provinces that carry on a provincial lottery,
(ii) profits paid to the provincial government by a business enterprise, a board, a commission or an authority of another province that carries on a provincial lottery, and
(iii) profits paid to the provincial government by a lottery carried on by the Government of Canada;
(ee) "miscellaneous provincial taxes and revenues including miscellaneous revenues from natural resources, concessions and franchises, sales of provincial goods and services and local government revenues from sales of goods and services and miscellaneous local government taxes" means revenues derived from sales of goods and services by local governments and local government taxes,

de paye »…
cc) « impôts immobiliers provinciaux et locaux »…
dd) « revenus tirés de loteries » revenus qu'une province tire:
(i) des bénéfices remis au gouvernement provincial par ses propres entreprises commerciales, offices, commissions ou administrations chargés de gérer une loterie provinciale, ou par des entreprises commerciales, offices, commissions ou administrations, appartenant conjointement à la province et à une ou plusieurs autres provinces, qui sont chargés de gérer une loterie provinciale,
(ii)des bénéfices remis au gouvernement provincial par une entreprise commerciale, un office, une commission ou une administration d'une autre province qui gère une loterie provinciale,(iii) des bénéfices remis au gouvernement provincial qui proviennent d'une loterie gérée par le gouvernement du Canada;
ee) « revenus et impôts provinciaux divers, y compris les revenus divers provenant de ressources naturelles, de concessions et de franchises, de la vente de biens provinciaux et de la fourniture de services provinciaux et les revenus locaux provenant de la vente de biens et de

including interest charges, fines and penalties imposed in respect of those taxes, other than the revenues derived from taxes or grants described in paragraph (cc), and revenues derived by a province from any source other than a source described elsewhere in this subsection and, for greater certainty, includes

(i) succession duties and gift taxes,

(ii) taxes on the sales of liquid petroleum gases,

(iii) revenues derived by a province from natural resources, other than the revenues described in paragraphs (o) to (z) and other than that portion of the revenues described in paragraph (ff) that relates to natural resources, but including revenues derived from fish and game licences,

(iv) revenues derived by a province from concessions and franchises and other privileges, other than the revenues described elsewhere in this subsection,

(v) revenues derived by a province from licences and permits, other than the revenues described in paragraphs (h) to (l) and subparagraph (iii),

(vi) revenues derived from sales of goods and services by the province and revenues classified by

la fourniture de services et des taxes locales diverses » revenus, autres que ceux visés à l'alinéa cc), qu'une province tire des ventes de biens et de services réalisées par les administrations locales et des impôts levés par celles-ci, y compris les intérêts, les amendes et les pénalités imposés à l'égard de ces impôts, ainsi que les revenus que la province tire d'une source non mentionnée ailleurs dans le présent paragraphe, notamment:

(i) les droits successoraux et l'impôt sur les dons,

(ii) les taxes de vente sur les gaz de pétrole liquéfiés,

(iii) les revenus provenant des ressources naturelles, à l'exclusion des revenus visés aux alinéas o) à z) et de la partie des revenus visés à l'alinéa ff) qui provient des ressources naturelles, mais y compris les revenus provenant des permis de pêche et de chasse,

(iv) les revenus provenant des concessions, des franchises et autres privilèges, à l'exclusion des revenus visés ailleurs dans le présent paragraphe,

(v)les revenus provenant des licences et des permis, à l'exclusion des revenus visés aux alinéas h) à l) et au sous-alinéa (iii)

(vi) les revenus tirés des ventes de biens et de

Statistics Canada as institutional sales of goods and services, other than taxes included in those revenues,
(vii) revenues derived from the imposition by the province of interest charges, fines and penalties in respect of taxes and any other charges and from the imposition by the province of any other interest charges, fines and penalties, other than those imposed in respect of the sources described in subparagraphs (x) to (xvi),
(viii) crop insurance premiums, and
(ix) other miscellaneous revenues derived from the province's own sources,
but does not include
(x) contributions derived from workers' compensation,
(xi) contributions derived from vacation-with-pay,
(xii) contributions derived from a universal pension plan,
(xiii) revenues derived from intergovernmental sales of goods and services, including the sale of manpower training services to the Government of Canada,
(xiv) returns, including interest and dividends, on investments, other than remittances from a provincially owned enterprise,
(xv) contributions derived

services réalisées par la province et les revenus classés par Statistique Canada comme revenus provenant de la vente de biens et de services par une institution, à l'exclusion des impôts inclus dans ces revenus,
(vii) les revenus provenant des intérêts, des amendes et des pénalités imposés par la province à l'égard des impôts et autre charge, ainsi que les revenus provenant des intérêts, amendes et pénalités autres que ceux imposés par la province à l'égard des sources visées aux sous-alinéas (x) à (xvi),
(viii) les primes d'assurance-récolte,
(ix) les autres revenus divers que la province tire de ses propres sources,
sont exclus de la présente définition:
(x) les contributions versées à l'égard des indemnités pour accident du travail,
(xi) les contributions versées à l'égard des congés payés,
(xii) les contributions versées à l'égard d'un régime universel de pensions,
(xiii) les revenus tirés de la vente de biens et de services entre gouvernements, y compris la vente au gouvernement du Canada de services de formation de la main-

from a public service or teachers' pension plan that is not constituted as a trust, and
(xvi) general or specific purpose transfer payments received from other governments; and
(ff) …

d'oeuvre,
(xiv) les produits de placements, y compris les intérêts et les dividendes, à l'exclusion des recettes versées par les entreprises appartenant à la province,
(xv) les contributions versées à l'égard d'un régime de pensions de la fonction publique ou d'un régime de pensions d'enseignants non constitués en fiducie, (xvi) les paiements de transfert reçus des autres administrations à des fins générales ou particulières;

ff) …

Federal-Provincial Fiscal Arrangements Regulations, 1987

Règlement de 1987 sur les accords fiscaux entre le gouvernement fédéral et les provinces.

12. (1) In adjusting the revenue subject to stabilization of a province for a fiscal year pursuant to paragraph 6(1)(b) of the Act, the Minister shall
(a) add to the revenue subject to stabilization of the province for the fiscal year as otherwise determined the amount of the decrease in revenues in the fiscal year that results from changes in the rates or in the structures of provincial taxes or other modes of raising revenue, including the following changes:
(i) the termination of an existing tax, fee, levy,

12. (1) Pour corriger le revenu soumis à stabilisation d'une province pour une année financière conformément à l'alinéa 6(1)b) de la Loi, le ministre doit:
a)d'une part, ajouter au montant par ailleurs déterminé du revenu soumis à stabilisation de la province pour l'année financière, le montant de la diminution des revenus au cours de l'année financière qui résulte de changements faits par la province dans les taux ou la structure soit des impôts provinciaux soit des autres mécanismes de prélèvement de la

premium or royalty during the fiscal year or during the immediately preceding fiscal year,
(ii) decreases, averaged over a year, in the rate of a tax, fee, levy, premium or royalty,
(iii) changes in the ranges of the base, averaged over a year, to which the rate of a tax, fee, levy, premium or royalty is applied,
(iv) changes in the classification of taxpayers where a tax, fee, levy, premium or royalty varies according to some attribute of the taxpayer, such as the nature of the activity, the form of the business organization, the kind of ownership of the business or the age of the taxpayer,
(v) increases in deductions, credits or allowances, averaged over a year, that the taxpayer may claim in determining the amount of the tax or the base to which the rate of tax of the taxpayer is applied,
(vi) the adding, broadening or enlarging of exemptions, averaged over a year, from a tax, fee, levy, premium or royalty,
(vii) increases in rebates, averaged over a year, in respect of a tax, fee, levy, premium or royalty,
(viii) decreases, averaged over a year, in the mark-up on goods or services that are sold to the public by

province, notamment les changements suivants:
(i) l'abolition d'un impôt, d'une taxe, d'un droit, d'une prime ou d'une redevance au cours de l'année financière ou au cours de l'année financière précédente,
(ii)les diminutions, en moyenne pour une année, du taux d'un impôt, d'une taxe, d'un droit, d'une prime ou d'une redevance,
(iii)les changements, en moyenne pour une année, apportés aux tranches de l'assiette à laquelle s'applique le taux d'un impôt, d'une taxe, d'un droit, d'une prime ou d'une redevance,
(iv)les changements apportés à la classification des contribuables,
lorsqu'un impôt, une taxe, un droit, une prime ou une redevance varie selon une caractéristique du contribuable, par exemple, la nature de l'activité qu'il exerce, le genre d'entreprise, la nature de la propriété de l'entreprise ou l'âge du contribuable,
(v)les augmentations, en moyenne pour une année, des déductions, des crédits ou des allocations que le contribuable peut réclamer dans le calcul de son impôt ou de l'assiette à laquelle son taux d'impôt s'applique,
(vi)l'adjonction, l'extension ou l'augmentation des

the province or its agencies,
(ix) decreases in the proportion of the profits remitted to a provincial government by its own enterprises, and
(x) decreases in the charges for the rental or use of government property, including water power rentals; and
(b) subtract from the revenue subject to stabilization of the province for the fiscal year as otherwise determined the amount of the increase in revenues in the fiscal year that results from changes either in the rates or in the structures of provincial taxes or other modes of raising revenue, including the following changes:
(i) the introduction of a new tax, fee, levy, premium or royalty during the fiscal year or during the immediately preceding fiscal year,
(ii) increases in the rate, averaged over a year, at which a tax, fee, levy, premium or royalty is levied,
…
(vii) decreases in rebates, averaged over a year, in respect of a tax, fee, levy, premium or royalty,
(viii) increases, averaged over a year, in the mark-up on goods or services that are sold to the public by

exemptions, en moyenne pour une année, d'un impôt, d'une taxe, d'un droit, d'une prime ou d'une redevance,
(vii) les augmentations, en moyenne pour une année, des dégrèvements relatifs à un impôt, à une taxe, à un droit, à une prime ou à une redevance,
(viii)les diminutions, en moyenne pour une année, de la marge de bénéfice sur les biens ou les services vendus au public par la province ou ses organismes,
(ix)les diminutions de la proportion des bénéfices remis à une administration provinciale par ses propres entreprises,
(x)les diminutions des frais de location ou d'usage des biens du gouvernement, y compris la location d'énergie hydro-électrique;
b)d'autre part, soustraire du montant, par ailleurs établi du revenu soumis à stabilisation de la province pour l'année financière, le montant de l'augmentation des revenus au cours de l'année financière qui résulte de changements faits par la province dans les taux ou la structure soit des impôts provinciaux soit des autres mécanismes de prélèvement de la province, notamment les changements suivants:
(i)l'introduction d'un impôt, d'une taxe, d'un

the province or its agencies,	droit, d'une prime ou d'une redevance au cours de l'année financière ou au cours de l'année financière précédente,
(ix) increases in the proportion of the profits remitted to a provincial government by its own enterprises, and	(ii)les augmentations, en moyenne pour une année, du taux d'un impôt, d'une taxe, d'un droit, d'une prime ou d'une redevance,
…	…
	(vii) les diminutions, en moyenne pour une année, des dégrèvements relatifs à un impôt, à une taxe, à un droit, à une prime ou à une redevance,
	(viii)les augmentations, en moyenne pour une année, de la marge de bénéfice sur les biens ou les services vendus au public par la province ou ses organismes,
	(ix)les augmentations de la proportion des bénéfices remis à une administration provinciale par ses propres entreprises,
	…
13. (1) For the purposes of this Part, the total revenue derived by a province for a fiscal year from the revenue sources set out in the definition "revenue source" in subsection 4(2) of the Act is	13. (1) Pour l'application de la présente partie, le revenu total que tire une province, pour une année financière, des sources de revenu visées à la définition de "source de revenu", au paragraphe 4(2) de la Loi, est:
…	…
(c) in the case of any other revenue source set out in that definition and in the case of any part of the revenue sources set out in paragraphs (a) and (b) of	c)dans le cas de toute source de revenu visée aux autres alinéas de cette définition et dans le cas de toute partie des sources de revenu visées aux alinéas a) et b) de cette

that definition to which paragraphs (a) and (b) of this subsection do not apply, the amount as determined by the Minister based on the information made available to the Minister by the province in its application, as adjusted if necessary by the Minister, and in the certificate submitted to the Minister by the Chief Statistician of Canada in accordance with subsection 9(2).

définition à laquelle les alinéas a) et b) du présent paragraphe ne s'appliquent pas, le montant déterminé par le ministre selon les renseignements mis à sa disposition par la province dans sa demande de paiement de stabilisation, rajusté par lui au besoin, et de ceux contenus dans le certificat que lui a présenté le statisticien en chef du Canada conformément au paragraphe 9(2).

17. (1) The Minister shall make a final computation of the fiscal stabilization payment that may be paid to a province under the Act for a fiscal year within 32 months after the end of the fiscal year for which an application is made and shall provide the province with a statement describing the manner in which the amount, if any, of the fiscal stabilization payment was determined.

17. (1) Le ministre doit faire le calcul définitif du paiement de stabilisation qui peut être versé à une province en vertu de la Loi au cours d'une année financière dans les 32 mois qui suivent la fin de l'année pour laquelle une demande est présentée, et doit, le cas échéant, remettre à la province un état décrivant la façon dont le montant du paiement de stabilisation a été calculé.

(2) Where the Minister determines from the final computation made under subsection (1) that the fiscal stabilization payment that may be paid to the province exceeds the total of the interim payments, if any, made pursuant to subsection 15(2), the Minister may pay to the province any amount of the

(2) Lorsque le ministre détermine, d'après le calcul définitif, que le paiement de stabilisation qui peut être versé à la province dépasse le total des paiements provisoires effectués, le cas échéant, conformément au paragraphe 15(2), le ministre peut verser à la province tout montant de cet excédent jusqu'à concurrence

excess up to the total amount of the fiscal stabilization payment calculated under subsection 6(7) of the Act.	du montant du paiement de stabilisation total calculé en vertu du paragraphe 6(7) de la Loi.

FEDERAL COURT

SOLICITORS OF RECORD

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