

Federal Court



Cour fédérale

Date: 20100225

Docket: T-1419-08

Citation: 2010 FC 202

Ottawa, Ontario, February 25, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

ZALE CANADA DIAMOND SOURCING INC.

Plaintiff

and

**HER MAJESTY THE QUEEN
(MINISTER OF NATIONAL REVENUE)**

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a statutory appeal pursuant to section 81.2 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the ETA). Zale Canada Diamond Sourcing Inc. (the Plaintiff) appeals a negative decision dated June 30, 2008, rendered by the Minister of National Revenue, refusing the Plaintiff's request for a refund of the excise tax on jewellery that it paid from November 25, 2005 to May 1, 2006. The Plaintiff claimed that its right to a refund arose out of the passage of Bill C-259, *An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)*, 1st Sess., 38th Parl., 2005.

[2] This appeal, pursuant to section 81.2 of the ETA, is to be considered *de novo* and under the *Federal Courts Rules*, proceeds by way of an action and is not a judicial review of the Minister's decision not to accede to the refund request. Consequently, there is no standard of review to be considered and applied. The facts upon which the appeal was heard are contained in an agreed statement of facts and no witnesses were heard.

Factual Background

[3] The Plaintiff is a jewellery manufacturer whose principal place of business is located in Markham, Ontario. The Plaintiff pays excise tax in the normal course of its business.

[4] On January 16, 2007, the Plaintiff filed an application for a refund of excise taxes paid on jewellery for the period from November 25, 2005 to May 1, 2006. The amount claimed was \$406,118.19. By Notice of Determination dated May 8, 2007, the Plaintiff's request for a refund was denied.

[5] On June 4, 2007, the Plaintiff filed a Notice of Objection with regard to the Notice of Determination. The Minister rejected the Notice of Objection on June 30, 2008 and confirmed that no refund was payable to the Plaintiff. The Plaintiff now appeals that determination to the Federal Court.

Legislative History

[6] The Plaintiff's claim arises from certain changes that were made to the ETA in 2005 and 2006. It is important to understand the chronology of these changes and I will set them out here for ease of reference.

[7] Liability to pay excise taxes arises under section 23 of the ETA which reads as follows:

23. (1) Subject to subsections (6) to (8), whenever goods mentioned in Schedule I are imported or are manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other law, an excise tax in respect of the goods at the applicable rate set out in the applicable section of that Schedule, computed, if that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

23. (1) Sous réserve des paragraphes (6) à (8), lorsque les marchandises énumérées à l'annexe I sont importées au Canada, ou y sont fabriquées ou produites, puis livrées à leur acheteur, il est imposé, prélevé et perçu, outre les autres droits et taxes exigibles en vertu de la présente loi ou de toute autre loi, une taxe d'accise sur ces marchandises, calculée selon le taux applicable figurant à l'article concerné de cette annexe. Lorsqu'il est précisé que ce taux est un pourcentage, il est appliqué à la valeur à l'acquitté ou au prix de vente, selon le cas.

[8] Prior to February 24, 2005, the excise taxes on jewellery were assessed under section 5 of Schedule I of the ETA which read as follows:

5. (a) Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for the use of the blind, ten per cent of the amount by which the sale price

5. a) Horloges et montres adaptées à l'usage domestique ou personnel, sauf les montres d'employés de chemins de fer et les montres spécialement conçues pour l'usage des aveugles, dix pour cent de la

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| or duty paid value exceeds fifty dollars; | fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars; |
| (b) articles of all kinds made in whole or in part of ivory, jet, amber, coral, mother of pearl, natural shells, tortoise shell, jade, onyx, lapis lazuli or other semi-precious stones, ten per cent; | b) articles de toutes sortes constitués en tout ou en partie d'ivoire, de jais, d'ambre, de corail, de nacre, de coquillages naturels, d'écailles de tortue, de jade, d'onyx, de lazulite ou d'autres pierres fines, dix pour cent; |
| (c) the following articles, namely, articles commonly or commercially known as jewellery, whether real or imitation, including diamonds and other precious or semi-precious stones for personal use or for adornment of the person, and goldsmiths' and silversmiths' products except gold-plated or silver-plated ware for the preparation or serving of food or drink, ten per cent. | c) articles communément ou commercialement dénommés bijoux, véritables ou faux, y compris les diamants et autres pierres précieuses ou fines destinés à l'usage personnel ou à la parure, les produits de l'orfèvrerie, sauf les articles plaqués or ou argent pour la préparation ou le service des aliments ou breuvages, dix pour cent. |

[9] Section 5 of Schedule I to the ETA was replaced effective February 24, 2005. The amendments were made pursuant to sections 25 and 26 of the *Budget Implementation Act, 2005*, S.C. 2005, c. 30 (previously Bill C-43). This change introduced a progressive phasing out of the excise tax on jewellery. It also transformed the previous 5(a), 5(b) and 5(c) of Schedule I of the ETA into sections 5, 5.1 and 5.2 respectively. Sections 25 and 26 the *Budget Implementation Act, 2005* are as follows:

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| 25. (1) Section 5 of Schedule I to the Excise Tax Act is replaced by the following: | 25. (1) L'article 5 de l'annexe I de la Loi sur la taxe d'accise est remplacé par ce qui suit : |
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5. Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for the use of the blind,

5. Horloges et montres adaptées à l'usage domestique ou personnel, sauf les montres d'employés de chemins de fer et les montres spécialement conçues pour l'usage des aveugles :

(a) eight per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 23, 2005 and before March 2006;

a) huit pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;

(b) six per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 2006 and before March 2007;

b) six pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007;

(c) four per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 2007 and before March 2008; and

c) quatre pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 1er mars 2007 et se terminant le 29 février 2008;

(d) two per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 2008 and before March 2009.

d) deux pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 1er mars 2008 et se terminant le 28 février 2009.

5.1 Articles of all kinds made in whole or in part of ivory, jet, amber, coral, mother of pearl,

5.1 Articles de toutes sortes constitués en tout ou en partie d'ivoire, de jais, d'ambre, de

natural shells, tortoise shell, jade, onyx, lapis lazuli or other semi-precious stones,

corail, de nacre, de coquillages naturels, d'écailles de tortue, de jade, d'onyx, de lazulite ou d'autres pierres fines :

(a) eight per cent, applicable after February 23, 2005 and before March 2006;

a) huit pour cent, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;

(b) six per cent, applicable after February 2006 and before March 2007;

b) six pour cent, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007;

(c) four per cent, applicable after February 2007 and before March 2008; and

c) quatre pour cent, pour la période commençant le 1er mars 2007 et se terminant le 29 février 2008;

(d) two per cent, applicable after February 2008 and before March 2009.

d) deux pour cent, pour la période commençant le 1er mars 2008 et se terminant le 28 février 2009.

5.2 The following articles, namely, articles commonly or commercially known as jewellery, whether real or imitation, including diamonds and other precious or semi-precious stones for personal use or for adornment of the person, and goldsmiths' and silversmiths' products except gold-plated or silver-plated ware for the preparation or serving of food or drink,

5.2 Articles communément ou commercialement dénommés bijoux, véritables ou faux, y compris les diamants et autres pierres précieuses ou fines destinés à l'usage personnel ou à la parure, les produits de l'orfèvrerie, sauf les articles plaqués or ou argent pour la préparation ou le service des aliments ou breuvages :

(a) eight per cent, applicable after February 23, 2005 and before March 2006;

a) huit pour cent, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;

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| (b) six per cent, applicable after February 2006 and before March 2007; | b) six pour cent, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007; |
| (c) four per cent, applicable after February 2007 and before March 2008; and | c) quatre pour cent, pour la période commençant le 1er mars 2007 et se terminant le 29 février 2008; |
| (d) two per cent, applicable after February 2008 and before March 2009. | d) deux pour cent, pour la période commençant le 1er mars 2008 et se terminant le 28 février 2009. |
| (2) Subsection (1) is deemed to have come into force on February 24, 2005. | (2) Le paragraphe (1) est réputé être entré en vigueur le 24 février 2005. |
| 26. (1) Sections 5 to 5.2 of Schedule I to the Act are repealed. | 26. (1) Les articles 5 à 5.2 de l'annexe I de la même loi sont abrogés. |
| (2) Subsection (1) comes into force on March 1, 2009. | (2) Le paragraphe (1) entre en vigueur le 1er mars 2009. |

[10] On November 25, 2005, Bill C-259, *An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)*, 1st Sess., 38th Parl., 2005 received royal assent and came into force. The resulting statute, *An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)*, S.C. 2005, c. 55 (the Act) also modifies Schedule I to the ETA. The Act has only one section which is reproduced below:

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| 1. Section 5 of Schedule I to the Excise Tax Act is replaced by the following: | 1. L'article 5 de l'annexe I de la Loi sur la taxe d'accise est remplacé par ce qui suit : |
| 5. Clocks adapted to household or personal use, except those | 5. Horloges adaptées à l'usage domestique ou personnel, sauf |

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| <p>specially designed for the use of the blind, ten per cent of the amount by which the sale price or duty paid value exceeds fifty dollars.</p> | <p>celles spécialement conçues pour l'usage des aveugles, dix pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars.</p> |
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[11] Accordingly, after the passage of the Bill C-259, the pertinent sections of the ETA read as:

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| <p>5. Clocks adapted to household or personal use, except those specially designed for the use of the blind, ten per cent of the amount by which the sale price or duty paid value exceeds fifty dollars.</p> | <p>5. Horloges adaptées à l'usage domestique ou personnel, sauf celles spécialement conçues pour l'usage des aveugles, dix pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars.</p> |
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| <p>5.1 Articles of all kinds made in whole or in part of ivory, jet, amber, coral, mother of pearl, natural shells, tortoise shell, jade, onyx, lapis lazuli or other semi-precious stones,</p> | <p>5.1 Articles de toutes sortes constitués en tout ou en partie d'ivoire, de jais, d'ambre, de corail, de nacre, de coquillages naturels, d'écailles de tortue, de jade, d'onyx, de lazulite ou d'autres pierres fines :</p> |
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| <p>(a) eight per cent, applicable after February 23, 2005 and before March 2006;</p> | <p>a) huit pour cent, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;</p> |
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| <p>(b) six per cent, applicable after February 2006 and before March 2007;</p> | <p>b) six pour cent, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007;</p> |
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| <p>(c) four per cent, applicable after February 2007 and before March 2008; and</p> | <p>c) quatre pour cent, pour la période commençant le 1er mars 2007 et se terminant le 29 février 2008;</p> |
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| <p>(d) two per cent, applicable after February 2008 and before</p> | <p>d) deux pour cent, pour la période commençant le 1er</p> |
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mars 2008 et se terminant le 28 février 2009.

5.2 The following articles, namely, articles commonly or commercially known as jewellery, whether real or imitation, including diamonds and other precious or semi-precious stones for personal use or for adornment of the person, and goldsmiths' and silversmiths' products except gold-plated or silver-plated ware for the preparation or serving of food or drink,

5.2 Articles communément ou commercialement dénommés bijoux, véritables ou faux, y compris les diamants et autres pierres précieuses ou fines destinés à l'usage personnel ou à la parure, les produits de l'orfèvrerie, sauf les articles plaqués or ou argent pour la préparation ou le service des aliments ou breuvages :

(a) eight per cent, applicable after February 23, 2005 and before March 2006;

a) huit pour cent, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;

(b) six per cent, applicable after February 2006 and before March 2007;

b) six pour cent, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007;

(c) four per cent, applicable after February 2007 and before March 2008; and

c) quatre pour cent, pour la période commençant le 1er mars 2007 et se terminant le 29 février 2008;

(d) two per cent, applicable after February 2008 and before March 2009.

d) deux pour cent, pour la période commençant le 1er mars 2008 et se terminant le 28 février 2009.

[12] On December 7, 2005, the Canada Revenue Agency published a notice with regard to the changes introduced by Bill C-259, where it advised that changes has been made to the excise tax on clocks and watches with the passage of the bill and that the provisions under sections 5.1 and 5.2 of

Schedule I of the ETA remained in force (Canada Revenue Agency, Notice ET/SL55, "Notice to All Licensed Jewellery Manufacturers and Wholesalers under the *Excise Tax Act*, and to Importers Changes to the Excise Tax on Clocks and Watches" (7 December 2005) (the CRA Notice)).

[13] Schedule I to the ETA was again modified by the *Budget Implementation Act, 2006*, S.C. 2006, c. 4, s. 89 (in force May 2, 2006). Section 89 reads as follows:

89. (1) Sections 5 to 5.2 of Schedule I to the Excise Tax Act are repealed.

89. (1) Les articles 5 à 5.2 de l'annexe I de la Loi sur la taxe d'accise sont abrogés.

(2) Subsection (1) is deemed to have come into force on May 2, 2006.

(2) Le paragraphe (1) est réputé être entré en vigueur le 2 mai 2006.

Question at Issue

[14] The single issue in this appeal is whether *An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)* eliminated the excise tax that was paid by the Plaintiff on jewellery during the period from November 25, 2005 to May 1, 2006.

Relevant legislation

[15] All relevant portions of the legislation are reproduced as Appendix "B" to this judgment.

Plaintiff's Arguments

[16] In brief, the Plaintiff claims when the Act came into force on November 25, 2005, it was intended to eliminate the excise tax on jewellery and that a drafting error in Bill C-259 is the clear reason why this was not properly expressed in the text of the legislation. The Plaintiff argues that

Parliament's intent in enacting Bill C-259 was clearly expressed and that this Court must adopt an approach to statutory interpretation that reflects this intention and must exercise its powers in order to correct the mistake accordingly.

Parliament's Intent in Enacting Bill C-259

[17] The Plaintiff submits that there can be no serious debate as to what Parliament's intended in passing Bill C-259 into law. The Plaintiff relies on the title of the enactment, its preamble, and the Parliamentary debates and committee reports to support its argument that Bill C-259 was clearly intended to eliminate the excise tax on jewellery effective November 25, 2005. The Plaintiff argues that there was simply a drafting error in Bill C-259 which did not account for the change in numbering pursuant to the amendments made by the *Budget Implementation Act, 2005*.

[18] With regard to the title of Bill C-259 and the Act, the Plaintiff urges that the title - "*An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)*" leaves no doubt as to Parliament's intent to amend the ETA in order to eliminate the excise tax on jewellery. The Plaintiff relies on doctrinal authority to support its arguments that the long title is supposed to cover everything contained in a bill and is used in interpretation to delineate the purpose and scope of an act (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Canada:Lexis Nexis, 2008) at 377).

[19] The Plaintiff also relies on the preamble of Bill C-259 and notes that section 13 of the *Interpretation Act*, R.S.C. 1985, c. I-21 sets out that the preamble "shall be read as part of the

enactment intended to assist in explaining its purport and object." The Plaintiff argues that the preamble of Bill C-259 leaves no doubt as to its purport and object. It urges that by pointing to the negative impact of the tax and the fact that Canada was alone in the industrialized and diamond producing nations in imposing such a tax, the preamble clearly sets the stage for the Act's purpose, which was to eliminate excise tax on jewellery and clearly does not suggest that Parliament intended to increase the excise tax on clocks, eliminate the excise tax on watches and leave the excise tax on jewellery unchanged.

[20] The Plaintiff further calls upon the parliamentary record surrounding Bill C-259 and submits that this record is replete with references that disclose that it was Parliament's intent to eliminate the excise tax on jewellery by replacing the former section 5 of Schedule I to the ETA and its three subsections 5(a), 5(b) and 5(c), with a single section 5 that would impose excise tax only on certain clocks (the portions of the parliamentary record that are referred to are reproduced in an appendix filed by the Plaintiffs and contained in the Court record, see Extracts from the parliamentary record concerning Bill C-259 and the most pertinent portions are cited in the Plaintiff's Written Submissions at paragraphs 49 to 54).

[21] The Plaintiff submits that reference to parliamentary debate to ascertain the purpose of legislation is a common tool of statutory interpretation. It refers the Court to the following quote from the Supreme Court of Canada in *Reference re Firearms Act*, 2000 SCC 31, [2000]

1 S.C.R. 783, at paragraph 17:

A law's purpose is often stated in the legislation, but it may also be ascertained by reference to extrinsic material such as Hansard and

government publications (...) While such extrinsic material was at one time inadmissible to facilitate the determination of Parliament's purpose, it is now well accepted that the legislative history, Parliamentary debates, and similar material may be quite properly considered as long as it is relevant and reliable and is not assigned undue weight (...)

[22] In light of this approach and the cited passages of the parliamentary record, the Plaintiff maintains that when Parliament passed Bill C-259 into law, it clearly intended on eliminating the excise tax on jewellery even if that was not the result achieved in the end.

[23] Throughout the Plaintiff's pleadings and submissions, it has urged the Court to reject the approach adopted in the CRA Notice which it qualifies as being a literal interpretation which ignores Parliament's intent, as set out in the title, the preamble and the parliamentary record.

Statutory Interpretation and the Court's Interpretive Power to Correct Mistakes

[24] The Plaintiff submits that the Court must adopt the approach set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 [*Re Rizzo Shoes*] and must not rely only on the wording of the statute in interpreting it. Rather, "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" (at paragraph 21). The Plaintiff adds that the wording of Bill C-259 should be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" under section 12 of the *Interpretation Act*.

[25] Accordingly, the Plaintiff contends that the interpretation adopted in the CRA Notice is an absurdity and is contrary to the principles of statutory interpretation. Rather, in light of the principles set out in *Re Rizzo Shoes* and the *Interpretation Act*, the Court should interpret the Act as having repealed sections 5, 5.1 and 5.2 of Schedule I of the ETA as of its coming into force on November 25, 2005.

[26] The Plaintiff submits that, in the present case, there is a clear error and that it has provided the Court with a clear understanding of how that error occurred. The Plaintiff contends that Parliament made a simple clerical mistake in drafting the legislation and that this is apparent on the face of the legislation itself: the drafters failed to take into account the fact that the subsections 5(a), 5(b) and 5(c) of Schedule I to the ETA had become 5, 5.1 and 5.2 respectively in the preceding months, and this is why the Act refers only to section 5.

[27] The Plaintiff argues that in cases where there is a clear drafting error, the Court has jurisdiction to correct the error, particularly when the Court believes that the text of the legislation does not express what the legislator meant to say. This can be signalled by the fact that the words chosen are meaningless, contradictory or incoherent or if the provision as drafted leads to a result that cannot have been intended (Sullivan at 173-174). It adds that such an approach was endorsed in *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245 at paragraph 69, where Justice Binnie states that judicial correction of perceived errors in legislative enactments "is performed on the basis that the corrected enactment expresses the intent of the enacting body. The clerical error is generally apparent on the face of the enactment itself."

Impact of the subsequent coming into force of section 89 of the *Budget Implementation Act, 2006*

[28] The Plaintiff submits that there is the ancillary issue in this case of the effect of the coming into force of section 89 of the *Budget Implementation Act, 2006* which repealed sections 5, 5.1 and 5.2 of Schedule I to the ETA effective May 2, 2006. More precisely, the issue is whether or not the Act can be interpreted by reference to the subsequent passage of the *Budget Implementation Act, 2006*. The Plaintiff submits that the answer lies exclusively in the *Interpretation Act*, at section 45(1), which reads as follows:

The repeal of an enactment in whole or in part shall not be deemed to be or to involve a declaration that the enactment was previously in force or was considered by Parliament or other body or person by whom the enactment was enacted to have been previously in force.

[29] The Plaintiff also notes that the *Budget Implementation Act, 2006* was enacted by a wholly different Parliament and cites jurisprudence warning against using subsequent legislation to cast light on the meaning of earlier legislation (see *Beothuk Data Systems Ltd. v. Dean*, [1998] 1 F.C. 433 (F.C.A.) at paragraph 50 and 111; *United States of America v. Dynar*, [1997] 2 S.C.R. 462 at paragraphs 45 and 46).

[30] In light of this reasoning, the Plaintiff submits that the *Budget Implementation Act, 2006* could not and did not undo the prior repeal that it claims occurred on November 25, 2005 with the coming into force of the Act.

Defendant's Arguments

[31] Essentially, the Defendant argues that Bill C-259 did not eliminate the excise tax on jewellery from November 25, 2005 to May 1, 2006. The Defendant submits that there is no ambiguity of language and that the text of Bill C-259 cannot be interpreted to mean that sections 5.1 and 5.2 of Schedule I to the ETA are repealed in addition to the replacement of section 5. Furthermore, the Defendant maintains that should the Court conclude that there is indeed a drafting mistake, it does not have the jurisdiction to read in the repeal of sections 5.1 and 5.2.

Interpretation of Bills C-43 and C-259

[32] The Defendant emphasizes that the statutes in question are taxation statutes. As such they require careful consideration of the actual words used in order to ensure that taxpayers can safely rely on them to arrange their affairs, particularly when these words are precise and unambiguous. The Defendant submits that broad consideration of statutory purpose cannot override specific clear language (*Imperial Oil Ltd. v. Canada*, 2006 SCC 46, [2006] 2 S.C.R. 447 at paragraph 26). Furthermore, where the words of a statute are clear and unequivocal, legislative purpose may not be used to supplant clear statutory language (*Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715 at paragraph 23).

[33] Accordingly, contrary to the Plaintiff's submissions, the Defendant holds that reference to the preamble and title, cannot override the clear and unambiguous language of Bill C-259. Moreover, even if the *Interpretation Act* provides that the preamble may assist in the interpretation of legislative purpose, the preamble may not prevail over the clear and unambiguous language of an

enactment. The Defendant also argues that the title cannot prevail over the clear and unambiguous language of an enactment.

[34] Although, the Defendant argues that the language of Bill C-259 is clear and unambiguous and that legislative intent cannot be used to supplant it, it also submits that a review of the history of Bills C-43 and C-529 reveals that the legislative intent is consistent with the language of the statute.

[35] The Defendant acknowledges that Parliamentary debates show that there was a lot of support for the elimination of the jewellery tax, but it also highlights that there was debate as to whether the elimination should be done as a phase out or immediately. These issues were debated at the second and third readings of Bill C-259 as well as the meetings of the Standing Committee on Finance (see references in Defendant's Written Submissions, page 7 at footnote 11). It was also debated in the Senate both before and after the passage of Bill C-43 (see references in Defendant's Written Submissions, page 8 at footnote 14).

[36] The Defendant draws the Court's attention to the fact that there was a motion to remove Bill C-259 from the Senate Order Paper because the Senate had already decided how to eliminate the excise tax on jewellery by Bill C-43 but was allowed to remain following a procedural ruling that Bill C-259 would only modify the tax on clocks (see references in Defendant's Written Submissions, pages 8 and 9 at footnotes 15 and 18).

[37] Also, in discussing Bill C-259, the members of the Standing Senate Committee on Banking, Trade and Commerce relied on the version of section 5 of Schedule I to the ETA as it read before being amended by the *Budget Implementation Act, 2005* (see references in Defendant's Written Submissions, page 9 at footnote 17).

[38] The Defendant suggests, that if the Senate's intention in passing Bill C-259 was in fact to immediately eliminate the tax on jewellery, it should have returned Bill C-259 to the House of Commons with a suggestion to modify it to provide for the repeal of sections 5.1 and 5.2 as well as section 5 of Schedule I to the ETA.

[39] Finally, the Defendant submits that even if the failure to repeal sections 5.1 and 5.2 of Schedule I of the ETA in Bill C-259 was an oversight, Parliament could have reversed the mistake in the *Budget Implementation Act, 2006* by repealing sections 5 to 5.2 retroactively to November 25, 2005 instead of retroactive to May 2, 2006. That it did not do so, in the Defendant's submission, confirms that Parliament's intent was to retain the tax imposed by sections 5.1 and 5.2 during the period from November 25, 2005 to May 1, 2006.

The Court's Interpretive Power to Correct Mistakes

[40] The Defendant agrees that a drafting error can be presumed when the Court finds that the legislation does not express what the legislature meant to say. This happens when the words chosen are meaningless, contradictory or incoherent or if the provision as drafted leads to a result that cannot have been intended (Sullivan at 173-174). However, the Defendant argues that neither of

these circumstances are present in this case and the most plausible interpretation of Parliament's legislative intent is that there was no drafting error.

[41] The Defendant submits that there is nothing meaningless, contradictory or incoherent in the words of the sole provision of the Act. Further, the provision as drafted does not lead to a result that could not have been intended. That the excise tax on jewellery remained in effect for the period from November 25, 2005 to May 1, 2006 is neither an anomalous or an absurd result in the Defendant's opinion. Rather, it is plausible and, as argued, is consistent with the intent of Parliament.

[42] Furthermore, the Defendant holds that even if the Court were to conclude that the provision contains a mistake, it does not have the jurisdiction to read in the repeal of sections 5.1 to 5.2 of Schedule I to the ETA. The Defendant submits the Court may correct an over-inclusive provision which needs to be given a narrower interpretation. However, the Court may not broaden the scope of an under-inclusive provision by "reading in" language as this would essentially constitute an amendment. The Defendant maintains that reading the Act so as to repeal sections 5.1 and 5.2 would broaden the scope of the Act.

[43] The Defendant also submits that in order to correct any perceived error, the Court would be required to delve into Parliament's domain of policy making and would need to consider what changes should be made and how. For example, should both sections 5.1 and 5.2 be eliminated although only section 5.2 is at issue here? Should the Court also review the rate on clocks? The

Defendant urges that only Parliament has the constitutional authority to repeal sections 5.1 and 5.2 of Schedule I to the ETA and it did so with the *Budget Implementation Act, 2006* and the Court should not interfere with that decision.

Analysis

[44] The case before the Court raises a question of pure statutory interpretation: did *An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)* eliminate the excise tax on jewellery effective November 25, 2005?

[45] What is particular about this case is that any question on the effect of the amendment is not raised by the language of the statute; this is not a case where the Court is faced with unclear or ambiguous language and must choose between two meanings. Rather, the Plaintiff has argued that there was a drafting error which has essentially supplanted the intent and purpose of Bill C-259.

[46] The parties have provided a very complete picture of how the two bills in question came to be and how they interacted with each other. I think it will be useful to go over that before continuing on.

[47] Bill C-259, which would become *An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)*, (the Act) is a private member's bill that was introduced to the House of Commons on November 3, 2004. It passed through second reading on January 31, 2005 and was then studied by the Standing Committee on Finance before being adopted on third reading on June 15, 2005. At

the time Bill C-259 was introduced and studied in Committee, section 5 of Schedule I to the ETA provided for the application of a 10% excise tax in three separate subheadings; specifically 5(a) which referred to clocks and watches, 5(b) which referred to semi-precious stones and 5(c) which referred to articles commonly known as jewellery. Initially, Bill C-259 proposed to repeal paragraph 5(c) only in order to eliminate the excise tax on jewellery but it was amended to eliminate the tax on all items under section 5 except for clocks (House of Commons, *Standing Committee on Finance*, Evidence, No. 49, 38th Parl., 1st sess. (24 March 2005) - see Plaintiff's Extracts from the parliamentary record concerning Bill C-259, Tab 5; House of Commons, *Standing Committee on Finance*, Evidence, No. 61, 38th Parl., 1st sess. (19 May 2005) - see Plaintiff's Extracts from the parliamentary record concerning Bill C-259, Tab 8). Accordingly, the proposed amendment would replace the subheadings with a single section that provided only for an excise tax on clocks (see the Act which is reproduced in Appendix "B" to this decision). Bill C-259 received royal assent and came into force on November 25, 2005.

[48] Bill C-43, which would become the *Budget Implementation Act, 2005*, was introduced to the House of Commons in first reading on March 24, 2005, was passed on second reading on May 19, 2005 and then studied by the Standing Committee on Finance before finally being passed on third reading on June 16, 2005. One will note that this was the day after Bill C-259 was passed on third reading.

[49] Bill C-43 also provided for a change to section 5 of Schedule I to the ETA. Bill C-43 provided for a phasing out of the excise tax on the items listed under section 5. This was done by

changing each subheading into a numbered section with its own subheadings that provided the phase out schedule for the tax. Therefore, 5(a) which referred to clocks and watches, 5(b) which referred to semi-precious stones and 5(c) which referred to articles commonly known as jewellery became sections 5, 5.1 and 5.2 respectively (see the *Budget Implementation Act, 2005* reproduced in Appendix "B" to this decision). Bill C-43 received royal assent June 29, 2005. Section 25 of the *Budget Implementation Act, 2005* which provided for the phase out of the tax and the changes to section 5 of Schedule I of the ETA was deemed to come into force retroactively on February 24, 2005.

[50] Bill C-43 received royal assent and came into force before Bill C-259 and the text of Bill C-259 was never amended to reflect the renumbering introduced by the *Budget Implementation Act, 2005*, thus when *An Act to amend the Excise Tax Act (elimination of excise tax on jewellery)* finally came into force on November 25, 2005 it amended only section 5 of Schedule I to the ETA which referred to clocks and watches without amending sections 5.1 and 5.2 which taxed semi-precious stones and jewellery. The end result being an increase in the excise tax on clocks, the elimination of the excise tax on watches and the excise tax on jewellery and semi-precious stones remained unchanged.

[51] The Plaintiff claims that this Court must correct the drafting error and read the Act as having amended section 5.2 as well in order to conclude that it is entitled to a refund of the excise tax on jewellery assessed from November 25, 2005 to May 2, 2006.

[52] In resolving the question at issue raised by the Plaintiff, I first note that there is no ambiguity that arises on the face of the statutory provision – the text is clear. The Plaintiff has submitted that the error is obvious on the face of the text, but I cannot accept that position. Any doubt as to the intended meaning of the Act requires that one take into account the context of the statute, including the title, the preamble, the legislative history and Parliamentary debates.

[53] This approach to interpretation is of course in keeping with the modern principle set out by the Supreme Court of Canada in *Re Rizzo Shoes* and that has been applied by the courts since then. The Supreme Court has also confirmed, many times over, that this approach applies equally to taxation statutes in the same way that it does to other statutes (*A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42, [2007] 3 S.C.R. 217 at paragraph 16). As the cases cited by the Defendant show, because of the particular nature of the taxation scheme, there has also been a greater emphasis on the textual approach when it comes to the interpretation of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). I am mindful of the caution made in the context of the *Income Tax Act* that "courts must therefore be cautious before finding within the clear provisions of the Act an unexpressed legislative intention [citations omitted]. Finding unexpressed legislative intentions under the guise of purposive interpretation runs the risk of upsetting the balance Parliament has attempted to strike in the Act" (*Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622 at paragraph 43). In the context of the ETA, I would agree that similar caution is necessary but I do not find that it precludes the Court from considering the context of the Act.

[54] I accept the Plaintiff's submissions that both the long title and the preamble of the Act show that the intent behind the proposed amendment to Schedule I of the ETA was to eliminate the excise tax on jewellery. If one were to rely solely on the title and the preamble it is abundantly clear that the initial intent was to eliminate the tax on jewellery, however these tools do not account for the question of whether that remained the intent once the phase out was introduced in the *Budget Implementation Act, 2005*.

[55] Both parties have relied on the parliamentary record in order to prove Parliament's intent. They have both pointed to portions of the record that support their respective positions. The Plaintiff holds that the minutes from the meetings of the Standing Committee on Finance show that the intent was to eliminate the tax on jewellery entirely, even though a phase out of the tax was put forward in the budget bill - Bill C-43 (House of Commons, *Standing Committee on Finance*, Evidence, No. 49, 38th Parl., 1st sess. (24 March 2005) - see Plaintiff's Extracts from the parliamentary record concerning Bill C-259, Tab 5; House of Commons, *Standing Committee on Finance*, Evidence, No. 61, 38th Parl., 1st sess. (19 May 2005) - see Plaintiff's Extracts from the parliamentary record concerning Bill C-259, Tab 8). This was also expressed during the debate on third reading of Bill C-259, where the member sponsoring the bill stated:

It might be worth noting that what we are dealing with here is section 5 of the Excise Tax Act, which under the current regulations is a three part clause giving effect to impose a hidden 10% tax on watches and clocks, on semi-precious metals and stones and on jewellery.

(...)

The government put a provision in the budget in February that this tax would be phased out over four years at 2% per year. This is in a

sense welcome, but in another sense there was further division because a bad tax was a bad idea so why not get rid of it in its entirety. Therefore, my sponsored bill continued in the process. (*House of Commons Debates*, No. 110 (7 June 2005) (John Duncan) - see Printout of the extracts of the relevant documents relied upon by the Defendant, Tab 26 at page 0026.134)

Although this passage would seem to indicate that the preference was to replace the phase out with a complete elimination of the tax, I believe that we must be cautious in extending this reasoning too far. Particularly in light of the fact, that the next day Parliament passed Bill C-43 which contained the phase out provisions. If one looks to the last decision made by the House of Commons, the preference would seem to be for the phase out and not the total elimination of the tax.

[56] As the Defendant highlighted, the intent suggested by the Plaintiff becomes less obvious when Bill C-259 was debated in the Senate. The record shows that there were mistakes and oversights that make it difficult to discern the intent. The record shows that a point of order was raised that the bill should not remain on the Order Paper as the Senate had already dealt with the issue of the excise tax under Bill C-43. The following excerpts are instructive:

Hon. Jack Austin (Leader of the Government): Honourable senators, the private member's bill before us was introduced in the House of Commons on November 3, 2004. It came to this chamber on June 16, 2005. Since receiving this bill, much has changed. This bill has been overtaken by events; I am referring to Bill C-43, an act to implement certain provisions of the budget tabled in Parliament on February 23, 2005, which we passed on June 28, 2005 and which was given Royal Assent on June 29, 2005.

In passing Bill C-43, the Senate took the decision to eliminate the excise tax on jewellery in stages over four years. Having made that decision, I am obliged to say that this bill, which proposes the immediate elimination of excise tax on jewellery, should not remain on the Order Paper. The Senate already in this session has pronounced itself on this matter.

(...)

I am asking, Your Honour, for a ruling. If the ruling should be found not to favour my submission, I would then agree that the bill should proceed to committee. However, if the ruling favours my submission, and I believe strongly that it should, then the matter would be disposed of. (*Debates of the Senate*, Vol. 142, No. 98 (23 November 2005) - see Plaintiff's Extracts from the parliamentary record concerning Bill C-259, Tab 34 at pages 43 and 44)

[57] A ruling was made that allowed Bill C-259 to remain on the Order Paper:

Bill C-43, which is now chapter 30 of the Statutes of Canada, 2005, contains an amendment to Schedule I of the Excise Tax Act that will phase out the excise tax on jewellery through a series of rate reductions over the next four years. Among the items to be affected by this tax change are articles of all kinds made of various materials, including ivory, coral, jade, onyx and semi-precious stones. Other items to benefit from this tax reduction include personal objects made of real or artificial diamonds, as well as gold and silver jewellery.

Of particular interest for the purposes of this point of order is the tax reduction that will be given to clocks. Chapter 30 specifies that the phase-in tax reduction will apply to the following items when their value exceeds \$50:

Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for use of the blind.

Bill C-259 is a one-clause bill that provides an immediate 10 per cent reduction for

Clocks adapted to household or personal use, except those specially designed for the use of the blind ...

if their sale price or duty-paid value exceeds \$50.

There is little doubt that these two clauses resemble one another, but they are also different in certain critical respects. The question to be determined is whether they are sufficiently the same to disallow

further consideration of Bill C-259 or whether they are sufficiently different to allow Bill C-259 to proceed.

(...)

Bill C-259 amends the application of the excise tax on clocks at an accelerated rate in comparison to the proposal enacted through the budget implementation bill adopted earlier this year. The means, therefore, are not the same. If the Senate adopts this bill and it is made law by Royal Assent, it will have the effect of changing the rate of tax reduction now in place through the enactment of Bill C-43. I do not regard this measure to be the same, based on the criteria established by the decision of Speaker Fraser. The same end is not achieved by the same means. The two measures are substantially different, and I am prepared to rule that debate on Bill C-259 can continue. (*Debates of the Senate*, Vol. 142, No. 98 (23 November 2005) (The Honourable Speaker *pro tempore*) - see Printout of the extracts of the relevant documents relied upon by the Defendant, Tab 18 at pages 0034.043 and 0034.044)

[58] This extract would suggest that Bill C-259 was allowed to remain on the Order Paper as it was understood by the Honourable Speaker to amend "the application of the excise tax on clocks at an accelerated rate in comparison to the proposed budget implementation bill adopted earlier (...)" and therefore not be the same (*Debates of the Senate*, Vol. 142, No. 98 (23 November 2005), (The Honourable Speaker *pro tempore*) - see Printout of the extracts of the relevant documents relied upon by the Defendant, Tab 18 at page 0034.044). It does not seem that it was understood that the goal of the bill was to eliminate the excise tax on jewellery.

[59] The record also shows that when discussing Bill C-259, the Standing Senate Committee on Banking, Trade and Commerce was given the wrong version of section 5 to Schedule I of the ETA. It is mentioned that the version circulated contained section 5 with paragraphs (a), (b) and (c).

The Chairman: Before I allow senators to respond, I want to ask you a technical question. I have asked our researcher to get us the section.

If you look at the first reading of your bill on November 3, it says that "paragraph 5(c) of schedule 1 is repealed." There is then a change in the final bill before us that was approved, where it says that "section 5 of section 1 is replaced by the following."

I do not have before me section 5. Do you have it available for us? I do not know if any of the senators have it in their files, but I do not have it in my files. When I looked at our briefing note prepared by the Library of Parliament, it said that this bill would repeal 5(c) of schedule 1. I want to know what we are talking about here.

Mr. Duncan: I think I can explain, without going into the details. The other complication is that Bill C-43 has had the effect of changing the Excise Tax Act. The way my bill came to the Senate, the wording was usurped by Bill C-43. However, I have a legal opinion from the House that that is still workable.

(...)

The Chairman: I still have a problem. Take a look at your bill. This is technical, and then I will allow the committee to get at it. I am just not clear on the matter I am dealing with. I now have schedule I in front of me. It is called 5(a), (b), and (c). This schedule, which I will pass around, says 5 (a), (b), and (c); this replacement just says five. I assume what you are saying is schedule 5 of schedule I is replaced by small schedule I. Is there any inconsistency between this document, the schedule, and this document, your bill? (*Proceedings of the Standing Senate Committee on Banking, Trade and Commerce*, Evidence, No. 19 (24 November 2005) - see Plaintiff's Extracts from the parliamentary record concerning Bill C-259, Tab 19 at pages 0035.002 and 0035.003)

This would seem to indicate that the copy relied on was the statute as it read before the coming into force of the *Budget Implementation Act, 2005*.

[60] This same record shows that the question of whether the tax should be eliminated in light of the phase out was also debated and the legislative scheme under the *Budget Implementation Act*,

2005 was clearly explained to the members. It seems that none of the members noticed that they were given an incorrect version of the current legislation and that the one before them did not reflect the phase out. Bill C-259 was never amended and passed through the Senate on third reading. The point I am making here, as already noted, is that in view of these passages, it is difficult to conclude what the true intent was and whether, in the end, Bill C-259 was meant to repeal all excise tax under sections 5, 5.1 and 5.2 of the ETA and put an immediate end to the phase out. The record is not clear and the Court must be cautious in reading in too much. As stated in *Reference re Firearms Act*, "it is now well accepted that the legislative history, Parliamentary debates, and similar material may be quite properly considered as long as it is relevant and reliable and is not assigned undue weight [emphasis added]" (at paragraph 17).

[61] With regard to the effect of the repeal pursuant to the *Budget Implementation Act, 2006*, the Defendant has submitted that this confirms that Parliament's intent was to retain the tax imposed by sections 5.1 and 5.2 during the period from November 25, 2005 to May 1, 2006. However, this interpretation must be rejected as it is contrary to section 45 of the *Interpretation Act* and the jurisprudence which confirms that such reasoning is inconsistent with the principles of statutory interpretation. Thus, the subsequent repeal does not shed light on Parliament's intent.

[62] The Plaintiff has urged the Court to exercise its jurisdiction to correct a drafting error in this case. The Plaintiff submits that a drafting error can be signalled by the fact that the words chosen are meaningless, contradictory or incoherent or if the provision as drafted leads to a result that cannot have been intended (Sullivan at 173-174). However, I note from the comments of Justice Binnie in

Wewaykum Indian Band, that such instances of clerical errors that justify intervention are rare and are generally apparent on the face of the enactment (at paragraph 69). The examples given by Justice Binnie show that these cases are usually those where there can be no true meaning without a correction. This is not the case here – the Act as drafted is not meaningless, contradictory or incoherent on its face. Quite the opposite the words are clear. I disagree that this is a simple clerical error which would justify that this Court read in that the Act repealed sections 5.1 and 5.2.

[63] With regard to the second manifestation of a drafting error proposed by Sullivan – that the provision as drafted leads to a result that cannot be intended, the Plaintiff submits that, in the present case, there is a clear error and that it has provided the Court with a clear understanding of how that error occurred and that for these reasons that Court should exercise its jurisdiction to correct the error. Sullivan proposes that:

Sometimes it is possible to give meaning to a provision, but that meaning is so absurd that, in the view of the court, it cannot have been intended. If there is no way to interpret the provision so as to avoid the absurdity, the court has no choice but to redraft. Ideally in such cases it will be apparent how the error came about – through careless amendment or "bad translation", for example. Ideally, too, it will be clear to the court what the legislature meant to say. When all three factors are present, namely (a) a manifest absurdity, (b) a traceable error, and (c) an obvious correction, most courts do not hesitate to correct the drafting mistake. (at 175)

[64] In its objective sense, an absurdity consists of a repugnance or inconsistency among the provisions of the statute or between the provisions of the statute and its avowed object or purpose (Sullivan at 303).

[65] While I agree with the Plaintiff, that the source of the error has been demonstrated to the Court and that there is some absurdity which flows from the application of the Act as written in light of some of the passages from the Parliamentary record, I am not convinced that there is an obvious correction in this case.

[66] Although the Plaintiff claims that the obvious correction would be to read the Act as having repealed section 5.2, as the Defendant has argued, this case involves under inclusive legislation and filling in the gaps in the legislation in this case, even if caused by a drafting error, would require the Court to greatly broaden the statute. The Court can only make explicit what is otherwise implicit and in doing more by adding to the terms of the statute, it risks usurping the legislative role (Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Canada: Carswell, 2000) at 402 and 403).

[67] In *Stone v. Woodstock (Town)*, 2006 NBCA 71, 302 N.B.R. (2d) 165, the New Brunswick Court of Appeal summarized the situations in which a court will generally sanction reading in - the include cases where Charter rights are in play, where the court can invoke its inherent or common law jurisdiction to justify the reading in of a right and where the facts require reading in to ensure the efficient operation of a legislative scheme (at paragraphs 13 to 20). This case does not fall into any of these exceptions.

[68] Furthermore, in correcting the error, the Court would be doing more than simply making explicit what is implicit. As much as the Parliamentary debates seem to be a strong indication of the

intent behind the Act, I cannot conclude with confidence that had Bill C-259 been properly understood and presented in its final stages, that it would indeed have been adopted to achieve the effect suggested by the Plaintiff. Also, the reading in suggested by the Plaintiff would have an effect on other aspects that seem akin to drafting. As the Defendant points out, the Court will have to decide on whether or not section 5.1 has also been repealed even if it is not in question here. Should the Court also review the rates on clocks? What about the different fiscal consequences when a tax is eliminated outright and when it is phased out.

[69] The present case does not involve the interpretation of ambiguous language, nor does it involve a case where one can conclude with confidence that the suggested Parliamentary intent is clear which makes it difficult to conclude that there is a manifest absurdity. Moreover, there is no obvious correction in this case as the suggested correction in this case would require more than simply correcting a drafting error.

[70] In light of the above reasoning, I do not find that the Act can be read as having eliminated the excise tax on jewellery from November 25, 2005 to May 1, 2006.

JUDGMENT

THIS COURT ORDERS that the action be dismissed. The Plaintiff shall pay costs to the Defendant by way of a lump sum for an amount of \$3000.00 inclusive of GST. All of the consolidated actions listed in Appendix A to this judgment are also dismissed but without costs and a copy of these reasons are to be placed in each file.

“Michel Beaudry”

Judge

APPENDIX "A" TO THIS JUDGMENT

1. Pursuant to the order of Prothonotary Morneau, dated February 9, 2009:

Samuel Kleinberg Jewellery (Canada) Inc. v. Her Majesty the Queen, T-1436-08
Costco Wholesale Canada Ltd. v. Her Majesty the Queen, T-1437-08
Klassen Jewellers Ltd. v. Her Majesty the Queen, T-1432-08
Marilena Jewellery Import Ltd. v. Her Majesty the Queen, T-1431-08
139551 Ontario Inc. (Carmella Fine Jewellery) v. Her Majesty the Queen, T-1439-08
Birks and Mayors Inc. v. Her Majesty the Queen, T-1433-08
Gemme Canadienne P.A. Inc. v. Her Majesty the Queen, T-1440-08
Chateau D'Argent Inc. v. Her Majesty the Queen, T-1435-08
3588718 Canada Inc. (Empress Jewellery) v. Her Majesty the Queen, T-1429-08
IBB International (Canada) Inc. v. Her Majesty the Queen, T-1434-08
Zale Canada Corporation v. Her Majesty the Queen, T-1645-08
Libman Manufacturing Ltd. v. Her Majesty the Queen, T-1623-08

2. Pursuant to the order of Prothonotary Morneau, dated July 14, 2009:

M. Evanchick Manufacturing Ltd. v. Her Majesty the Queen, T-356-09
Bijouterie Lavigueur Ltée. v. Her Majesty the Queen, T-357-09
E.P. Kaufmann & Co. Inc. v. Her Majesty the Queen, T-358-09
PM Gems Inc. v. Her Majesty the Queen, T-359-09

APPENDIX "B" TO THIS JUDGMENT

Interpretation Act, R.S.C. 1985, c. I-21.

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

13. The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

45. (1) The repeal of an enactment in whole or in part shall not be deemed to be or to involve a declaration that the enactment was previously in force or was considered by Parliament or other body or person by whom the enactment was enacted to have been previously in force.

(2) The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

(3) The repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

(4) A re-enactment, revision, consolidation or amendment of an enactment shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

12. Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

13. Le préambule fait partie du texte et en constitue l'exposé des motifs.

45. (1) L'abrogation, en tout ou en partie, d'un texte ne constitue pas ni n'implique une déclaration portant que le texte était auparavant en vigueur ou que le Parlement, ou toute autre autorité qui l'a édicté, le considérait comme tel.

(2) La modification d'un texte ne constitue pas ni n'implique une déclaration portant que les règles de droit du texte étaient différentes de celles de sa version modifiée ou que le Parlement, ou toute autre autorité qui l'a édicté, les considérait comme telles.

(3) L'abrogation ou la modification, en tout ou en partie, d'un texte ne constitue pas ni n'implique une déclaration sur l'état antérieur du droit.

(4) La nouvelle édicition d'un texte, ou sa révision, refonte, codification ou modification, n'a pas valeur de confirmation de l'interprétation donnée, par décision judiciaire ou autrement, des termes du texte ou de termes analogues.

Excise Tax Act, R.S.C. 1985, c. E-15.

23. (1) Subject to subsections (6) to (8),

23. (1) Sous réserve des paragraphes (6) à (8),

whenever goods mentioned in Schedule I are imported or are manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other law, an excise tax in respect of the goods at the applicable rate set out in the applicable section of that Schedule, computed, if that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

lorsque les marchandises énumérées à l'annexe I sont importées au Canada, ou y sont fabriquées ou produites, puis livrées à leur acheteur, il est imposé, prélevé et perçu, outre les autres droits et taxes exigibles en vertu de la présente loi ou de toute autre loi, une taxe d'accise sur ces marchandises, calculée selon le taux applicable figurant à l'article concerné de cette annexe. Lorsqu'il est précisé que ce taux est un pourcentage, il est appliqué à la valeur à l'acquitté ou au prix de vente, selon le cas.

Excise Tax Act, R.S.C. 1985, c. E-15, Schedule I (previous to February 24, 2005).

5. (a) Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for the use of the blind, ten per cent of the amount by which the sale price or duty paid value exceeds fifty dollars;

5. a) Horloges et montres adaptées à l'usage domestique ou personnel, sauf les montres d'employés de chemins de fer et les montres spécialement conçues pour l'usage des aveugles, dix pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars;

(b) articles of all kinds made in whole or in part of ivory, jet, amber, coral, mother of pearl, natural shells, tortoise shell, jade, onyx, lapis lazuli or other semi-precious stones, ten per cent;

b) articles de toutes sortes constitués en tout ou en partie d'ivoire, de jais, d'ambre, de corail, de nacre, de coquillages naturels, d'écailles de tortue, de jade, d'onyx, de lazulite ou d'autres pierres fines, dix pour cent;

(c) the following articles, namely, articles commonly or commercially known as jewellery, whether real or imitation, including diamonds and other precious or semi-precious stones for personal use or for adornment of the person, and goldsmiths' and silversmiths' products except gold-plated or silver-plated ware for the preparation or serving of food or drink, ten per cent.

c) articles communément ou commercialement dénommés bijoux, véritables ou faux, y compris les diamants et autres pierres précieuses ou fines destinés à l'usage personnel ou à la parure, les produits de l'orfèvrerie, sauf les articles plaqués or ou argent pour la préparation ou le service des aliments ou breuvages, dix pour cent.

Budget Implementation Act, 2005, S.C. 2005, c. 30.

25. (1) Section 5 of Schedule I to the Excise Tax Act is replaced by the following:

25. (1) L'article 5 de l'annexe I de la Loi sur la taxe d'accise est remplacé par ce qui suit :

5. Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for the use of the blind,

(a) eight per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 23, 2005 and before March 2006;

(b) six per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 2006 and before March 2007;

(c) four per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 2007 and before March 2008; and

(d) two per cent of the amount by which the sale price or duty paid value exceeds fifty dollars, applicable after February 2008 and before March 2009.

5.1 Articles of all kinds made in whole or in part of ivory, jet, amber, coral, mother of pearl, natural shells, tortoise shell, jade, onyx, lapis lazuli or other semi-precious stones,

(a) eight per cent, applicable after February 23, 2005 and before March 2006;

(b) six per cent, applicable after February 2006 and before March 2007;

(c) four per cent, applicable after February 2007

5. Horloges et montres adaptées à l'usage domestique ou personnel, sauf les montres d'employés de chemins de fer et les montres spécialement conçues pour l'usage des aveugles :

a) huit pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;

b) six pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007;

c) quatre pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 1er mars 2007 et se terminant le 29 février 2008;

d) deux pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars, pour la période commençant le 1er mars 2008 et se terminant le 28 février 2009.

5.1 Articles de toutes sortes constitués en tout ou en partie d'ivoire, de jais, d'ambre, de corail, de nacre, de coquillages naturels, d'écailles de tortue, de jade, d'onyx, de lazulite ou d'autres pierres fines :

a) huit pour cent, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;

b) six pour cent, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007;

c) quatre pour cent, pour la période commençant

and before March 2008; and

le 1er mars 2007 et se terminant le 29 février 2008;

(d) two per cent, applicable after February 2008 and before March 2009.

d) deux pour cent, pour la période commençant le 1er mars 2008 et se terminant le 28 février 2009.

5.2 The following articles, namely, articles commonly or commercially known as jewellery, whether real or imitation, including diamonds and other precious or semi-precious stones for personal use or for adornment of the person, and goldsmiths' and silversmiths' products except gold-plated or silver-plated ware for the preparation or serving of food or drink,

5.2 Articles communément ou commercialement dénommés bijoux, véritables ou faux, y compris les diamants et autres pierres précieuses ou fines destinés à l'usage personnel ou à la parure, les produits de l'orfèvrerie, sauf les articles plaqués or ou argent pour la préparation ou le service des aliments ou breuvages :

(a) eight per cent, applicable after February 23, 2005 and before March 2006;

a) huit pour cent, pour la période commençant le 24 février 2005 et se terminant le 28 février 2006;

(b) six per cent, applicable after February 2006 and before March 2007;

b) six pour cent, pour la période commençant le 1er mars 2006 et se terminant le 28 février 2007;

(c) four per cent, applicable after February 2007 and before March 2008; and

c) quatre pour cent, pour la période commençant le 1er mars 2007 et se terminant le 29 février 2008;

(d) two per cent, applicable after February 2008 and before March 2009.

d) deux pour cent, pour la période commençant le 1er mars 2008 et se terminant le 28 février 2009.

(2) Subsection (1) is deemed to have come into force on February 24, 2005.

(2) Le paragraphe (1) est réputé être entré en vigueur le 24 février 2005.

26. (1) Sections 5 to 5.2 of Schedule I to the Act are repealed.

26. (1) Les articles 5 à 5.2 de l'annexe I de la même loi sont abrogés.

(2) Subsection (1) comes into force on March 1, 2009.

(2) Le paragraphe (1) entre en vigueur le 1er mars 2009.

An Act to amend the Excise Tax Act (elimination of excise tax on jewellery), S.C. 2005, c. 55.

WHEREAS manufacturers currently pay an excise tax of ten per cent on the sale price of jewellery manufactured in Canada and importers currently pay an excise tax often per cent on the duty-paid value of imported jewellery;

Attendu :
que, à l'heure actuelle, les fabricants payent une taxe d'accise de dix pour cent sur le prix de vente des bijoux fabriqués au Canada et les importateurs, une taxe d'accise de dix pour cent sur la valeur à l'acquitté des bijoux importés;

WHEREAS this tax was introduced in 1918 in respect of several types of goods considered to be luxury goods but today is the only luxury tax in Canada;

que cette taxe, instaurée en 1918 pour certains types de marchandises considérées comme des articles de luxe, ne subsiste aujourd'hui qu'à l'égard des bijoux;

WHEREAS Canada is the only industrialized nation and the only diamond-producing nation that continues to have a luxury tax on jewellery;

que le Canada est le seul pays industrialisé et le seul pays producteur de diamants qui continue à prélever une taxe de luxe sur les bijoux;

AND WHEREAS, as a result of this tax, diamonds mined in Canada cost more in Canada than anywhere else in the world;

que cette taxe fait en sorte que les diamants extraits au Canada sont plus chers au pays que partout ailleurs,

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

1. Section 5 of Schedule I to the Excise Tax Act is replaced by the following:

1. L'article 5 de l'annexe I de la Loi sur la taxe d'accise est remplacé par ce qui suit :

5. Clocks adapted to household or personal use, except those specially designed for the use of the blind, ten per cent of the amount by which the sale price or duty paid value exceeds fifty dollars.

5. Horloges adaptées à l'usage domestique ou personnel, sauf celles spécialement conçues pour l'usage des aveugles, dix pour cent de la fraction du prix de vente ou de la valeur à l'acquitté qui est supérieure à cinquante dollars.

Budget Implementation Act, 2006, S.C. 2006, c. 4, s. 89.

89. (1) Sections 5 to 5.2 of Schedule I to the Excise Tax Act are repealed.

89. (1) Les articles 5 à 5.2 de l'annexe I de la Loi sur la taxe d'accise sont abrogés.

(2) Subsection (1) is deemed to have come into force on May 2, 2006.

(2) Le paragraphe (1) est réputé être entré en vigueur le 2 mai 2006.

Canada Revenue Agency, Notice ET/SL55, "Notice to All Licensed Jewellery Manufacturers and Wholesalers under the *Excise Tax Act*, and to Importers Changes to the Excise Tax on Clocks and Watches" (7 December 2005).

ET/SL 55

December 7, 2005

Notice to all Licensed Jewellery Manufacturers and Wholesalers Under the *Excise Tax Act*, and to Importers

Changes to the Excise Tax on Clocks and Watches

On November 25, 2005, Bill C-259, an Act to amend the *Excise Tax Act* (elimination of the excise tax on jewellery), received Royal Assent and became law.

Bill C-259 amended the wording of section 5 of Schedule I to the *Excise Tax Act*, and had the following immediate impacts on the administration of the excise tax:

- The excise tax on clocks adapted for household or personal use, except those specially designed for the use of the blind, increased to 10% of the amount by which the sale price or duty-paid value exceeds fifty dollars, effective November 25, 2005.
- The rate reduction schedule for clocks is eliminated.
- The excise tax on all watches is eliminated, effective November 25, 2005.
- The government will implement the provisions of Bill C-259, with the excise tax on clocks and watches applying, as described above.

The existing provisions of the *Excise Tax Act* contained in sections 5.1* and 5.2* of Schedule I remain in force, along with the previously announced rate reduction schedules (applying to articles made of semi-precious stones, jewellery, precious and semi-precious stones and goldsmiths' and silversmiths' products). The schedules and the rates are set out below:

| Effective Date | Reduced From | Reduced To |
|-------------------------|--------------|------------|
| 12:01a.m. March 1, 2006 | 8% | 6% |
| 12:01a.m. March 1, 2007 | 6% | 4% |
| 12:01a.m. March 1, 2008 | 4% | 2% |
| 12:01a.m. March 1, 2009 | 2% | 0% |

Finally, as set out in the existing legislation, the excise tax on clocks, articles made of semi-precious stones, jewellery, precious and semi-precious stones and goldsmiths' and silversmiths' products will be eliminated on March 1, 2009. In this regard, all licensed manufacturers and wholesalers of jewellery will be provided with further information regarding the eventual cancellation of their excise tax licences early in 2009.

* To see a detailed listing of products covered under sections 5.1 and 5.2 of Schedule I of the *Excise Tax Act*, you can visit the Web site for Bill C-43, which amended the Act in June of this year:

<http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E&Chamber=N&StartList=A&EndList=Z&Session=13&Type=0&Scope=I&query=4397&List=toc-1>

For further information, please consult the Canada Revenue Agency website at <http://www.cra-arc.gc.ca/menu-e.html>, or call the appropriate Excise Tax Information Line.

National Line: : 1-866-330-3304 (Toll-Free Service in English) or
1-888-609-0073 (Toll-Free Service in French);

Quebec Region Excise Tax Line: 1-888-609-0073 (Toll-Free Service in French);

Northern Ontario Region (Serving Ottawa and Northern Ontario areas)
1-705-677-7764 (Collect calls accepted).

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1419-08

STYLE OF CAUSE: **ZALE CANADA DIAMOND SOURCING INC.**
and
HER MAJESTY THE QUEEN (MINISTER OF
NATIONAL REVENUE)

PLACE OF HEARING: Montreal

DATE OF HEARING: February 18, 2010

REASONS FOR JUDGMENT
AND JUDGMENT: Beaudry J.

DATED: February 25, 2010

APPEARANCES:

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Me Charles Camirand FOR THE DEFENDANT

SOLICITORS OF RECORD:

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