Date: 20091112

Docket: A-520-08

Citation: 2009 FCA 325

CORAM: **SHARLOW J.A.**
LAYDEN-STEVENSON J.A.
RYER J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

And

IMPERIAL OIL RESOURCES LIMITED AND
IMPERIAL OIL RESOURCES VENTURES LIMITED

Respondents

Heard at Toronto, Ontario on October 28, 2009.

Judgment delivered at Ottawa, Ontario, on November 12, 2009.

REASONS FOR JUDGMENT BY: SHARLOW J.A.

CONCURRED IN BY: LAYDEN-STEVENSON J.A.
RYER J.A.

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REASONS FOR JUDGMENT

SHARLOW J.A.

[1] On May 6, 1976, the Governor in Council enacted the *Syncrude Remission Order*, C.R.C., c. 794. The respondents, Imperial Oil Resources Limited and Imperial Oil Resources Ventures Limited (collectively, "Imperial") disagree with the Crown on the manner in which the *Syncrude Remission Order* should be taken into account in determining Imperial's rights and obligations under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), for the 1997 taxation year. Their dispute was the subject of a trial in the Federal Court heard by Justice O'Reilly. He resolved the dispute in favour of Imperial, for reasons reported as *Imperial Oil Resources Ltd. v.*

Canada (Attorney General), 2008 FC 1037), and granted judgment in the amount he determined to be the shortfall in the amount of tax remitted to Imperial. The Crown is appealing that judgment. Imperial is cross-appealing on a question relating to interest on the remitted tax.

Standard of Review

[2] There is no factual dispute. The disagreement between the parties relates essentially to the correct interpretation of a regulation, the *Syncrude Remission Order*. That is a question of law that must be reviewed on the standard of correctness.

Background

[3] Generally, a provincial royalty on the production of a non-renewable resource represents the share of the resource that is reserved or payable to the province pursuant to a provincial law or a contract between the province and the producer. Prior to the events that gave rise to this case, a royalty reserved to a province was excluded from the producer's income as determined for income tax purposes, and a royalty payable to a province was deductible in computing the producer's income.

[4] In the early 1970s, the provinces made significant changes to the structure and quantum of provincial resource royalties, to the extent that the federal government perceived a threat of serious erosion to the federal income tax base. The federal government responded with amendments to the *Income Tax Act*. The amendments were intended to ensure that federal tax

relief for royalties would be limited to an amount the federal government considered appropriate. The amendments were enacted on March 13, 1975, effective after May 6, 1974.

[5] It is not necessary to review in detail all of the amendments made to the *Income Tax Act* on March 13, 1975 relating to resource royalties. It is enough to say that the amendments included the enactment of paragraphs 12(1)(*o*) and 18(1)(*m*) of the *Income Tax Act*. By the combined operation of those provisions, a resource producer, in computing its income for income tax purposes, was required to include and could not deduct any resource royalty payable to a province.

[6] As a counterbalance, resource producers became entitled to a federal abatement, replaced in 1976 by a new statutory deduction called the “resource allowance”. These measures provided tax relief as a surrogate for what the federal government considered to be a reasonable royalty on resource profits.

[7] During the period when the resource royalty amendments were being made to the *Income Tax Act*, the development of the oil sands in northern Alberta was in its beginning stages. In 1975, the oil companies involved in that development (including the corporate predecessors of Imperial) worked out a contractual royalty arrangement with Alberta called the “Alberta Crown Agreement”.

[8] The Alberta Crown Agreement deals with production from the "Syncrude Project", defined in the Agreement as follows:

> "Syncrude Project" means the scheme for the recovery of oil sands, crude bitumen or products derived therefrom approved in Approval No. 1920 of the Energy Resources Conservation Board of Alberta, as such scheme may be amended from time to time by any Approval issued in substitution therefor or amendment thereof under The Oil and Gas Conservation Act with the approval of the Lieutenant Governor in Council of Alberta, the Leases, the Leased Substances, the Facilities, and all other property that is owned, acquired or developed by the Lessees for the purpose of the said scheme, but (except for the inclusion of costs thereof in accordance with Schedule "A") does not include the Utilities Plant, the Synthetic Crude Pipeline or the properties owned, managed or developed by [Northward Developments Ltd.].

[9] The word "Leases" referred to in this definition is defined as Government of Alberta Bituminous Sands Leases No. 17 and 22 (subject to some exclusions and extensions that are not relevant to this appeal). Leases 17 and 22, located north of Fort McMurray, Alberta, are the location of the first production from the Alberta oil sands.

[10] The Alberta Crown Agreement obliges the participating oil companies to proceed with the Syncrude Project through a joint venture with Alberta in its capacity as the lessor of Leases 17 and 22 (Alberta as lessor is referred to in the Agreement as "Alberta Royalty"). The joint venture is governed by a separate agreement called the Syncrude Joint Venture and Management Agreement. The Syncrude Project assets are owned and operated by a corporation called Syncrude Canada Ltd. as agent for the participants.

[11] Under the Alberta Crown Agreement, Alberta is entitled to an amount equal to 50% of "Deemed Net Profit", determined on the basis of a formula in which value of the production

(determined in a specified manner) is reduced by certain operating costs and allowances for development and capital costs. It is undisputed that amounts receivable by Alberta under the Alberta Crown Agreement are within the scope of paragraphs 12(1)(*o*) and 18(1)(*m*) of the *Income Tax Act* as amended on March 13, 1975.

[12] While the Alberta Crown Agreement was being negotiated, the oil companies were working on an arrangement with the federal government to ensure that the *Income Tax Act* amendments referred to above, including paragraphs 12(1)(*o*) and 18(1)(*m*), would not apply to production from Leases 17 and 22. To that end, on May 6, 1976 the Governor in Council enacted the *Syncrude Remission Order* (reproduced in the Appendix to these reasons).

[13] The *Syncrude Remission Order* was enacted under section 17(1) of the *Financial Administration Act*, R.S.C. 1970, c. F-10, as it read in 1976. For the purposes of this appeal, it is undisputed that subsection 17(1) as it then read is substantially the same as subsection 23(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11, as it read in 1997:

23. (2) The Governor in Council may, on the recommendation of the Treasury Board and when he considers it in the public interest, remit any tax, fee or penalty.	23. (2) Sur recommandation du Conseil du Trésor, le gouverneur en conseil peut, s'il le juge d'intérêt public, faire remise de tous droits, taxes ou pénalités.

[14] Subsection 3(1) of the *Syncrude Remission Order* grants a remission of tax payable under Part I of the *Income Tax Act* as a result of the application of the "Royalty Provisions" (defined to include paragraphs 12(1)(*o*) and 18(1)(*m*) of the *Income Tax Act*) to the royalty receivable by

Alberta with respect to production from the "Syncrude Project". The *Syncrude Remission Order* defines "Syncrude Project" as follows:

"Syncrude Project" means the scheme of the participant for the recovery of leased substances from Leases 17 and 22;	« projet Syncrude » désigne le plan du participant en vue de la récupération des matières louées des concessions 17 et 22.

[15] In this appeal, it has not been suggested that anything turns on the differences between the definitions of "Syncrude Project" in the Alberta Crown Agreement and the *Syncrude Remission Order*. Similarly, the definition of the term "Leases 17 and 22" in the *Syncrude Remission Order* has been treated as substantially the same as the definition of "Leases" in the Alberta Crown Agreement.

[16] The *Syncrude Remission Order* by its terms applied from the first year of production from the Syncrude Project. By virtue of section 3(2) of the *Syncrude Remission Order*, it would cease to apply upon the occurrence of certain events, or on December 31, 2003, whichever occurred first.

[17] The oil companies participating in the Syncrude Project sought and obtained an advance income tax ruling setting out how the *Syncrude Remission Order* would be administered by the Minister of National Revenue. On April 28, 1976, a senior official with the Department of Finance wrote to the rulings officials at their request to offer this clarification of the intent of the *Syncrude Remission Order*:

> At your request I am writing to confirm that it was the government's clear intention to have the attached remission order operate as an amendment to the Income Tax Act for all purposes.

[18] The advance income tax ruling issued to the corporate predecessor of Imperial is dated April 29, 1976 and reads in relevant part as follows (my emphasis):

> A. As long as the remission order is in effect, its results for each taxation year will be that the tax remitted to Imperial will reduce the tax otherwise payable under the Income Tax Act of Canada to the amount which would be payable on the basis that: —
>
> 1. The 50% share of the Deemed Net Profit of the Alberta Joint Venture, and the leased substances taken in satisfaction thereof, and the proceeds of the disposition thereof, held by Alberta Royalty under the Alberta Crown Agreement, will not be taxable to Imperial or Syncrude [Canada Ltd.] under the provisions of paragraph 12(1)(o) or 18(1)(m) of the Income Tax Act of Canada.
> 2. The gross production royalty reserved to Alberta Royalty under the Alberta Crown Agreement, and the proceeds of disposition thereof, will not be taxable to Imperial or Syncrude [Canada Ltd.] under the provisions of paragraph 12(1)(o) or 18(1)(m) of the Income Tax Act of Canada.
> 3. The royalty prescribed to be paid to Alberta Royalty under the leases pursuant to the provisions of The Mines and Minerals Act of the Province of Alberta with respect to the Leased Substances and the proceeds of disposition thereof, will not be taxable to Imperial or Syncrude [Canada Ltd.] under the provisions of paragraph 12(1)(o) or 18(1)(m) of the Income Tax Act of Canada.
>
> […]
>
> C. The instalments and other payments of tax, interest and penalties required under the Income Tax Act of Canada for all relevant years will be computed in accordance with the rulings above.

[19] The administration of the *Syncrude Remission Order* caused no controversy until 1997. In that year, the Alberta Crown Agreement was amended for the sixth time in response to the announcement that Alberta intended to adopt a generic royalty regime to replace its policy of

separate agreements for each resource project. The generic royalty regime is to come into effect for the Syncrude Project in 2015. Amendment No. 6 to the Alberta Crown Agreement governs the transition to the new regime.

[20] Amendment No. 6 also recognizes an expansion of the Syncrude Project to include additional leases. I will refer to this as the “Expanded Syncrude Project”. It is common ground that the only additional leases included in the Expanded Syncrude Project that are relevant to this appeal are the “Aurora Leases”, located approximately 30 miles away from Leases 17 and 22.

[21] Alberta wished to provide an incentive to the original Syncrude Project participants to invest in the development of the Aurora Leases. For that reason, Alberta agreed that the basis for the royalty receivable to Alberta on production from the Expanded Syncrude Project would be reduced by credits for capital costs incurred in respect of their development (the “Aurora capital credits”).

[22] The Aurora Leases did not come into production until 2000. For 1997, the only production from the Expanded Syncrude Project was from Leases 17 and 22.

[23] In computing the amount of Part I tax to be remitted for 1997 under the *Syncrude Remission Order*, the Crown took the position that the royalty receivable by Alberta in respect of production for Leases 17 and 22 was the amount of the royalty receivable by Alberta under the Alberta Crown Agreement as amended by Amendment No. 6. In other words, the amount of the

income inclusion required by paragraph 12(1)(*o*) in respect of the Syncrude royalty receivable by Alberta took into account the Aurora capital credits, and the amount of the remission was reduced accordingly.

[24] Imperial took the position that this resulted in Imperial not receiving the full amount of remission and interest to which they were entitled. They commenced an application for judicial review in the Federal Court to argue that the amount of the remission should be computed on the basis of the royalty that would have been receivable by Alberta if the Alberta Crown Agreement had not been amended to provide the Aurora capital credits. That application was converted to an action. The trial was heard by Justice O'Reilly.

[25] Justice O'Reilly agreed with Imperial and, on September 17, 2008, granted judgment for the amount of the alleged underpayment of remission, with interest under subsection 31(2) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50. His conclusion is summarized in paragraph 46 of his reasons, which reads in relevant part as follows:

> […] The [*Income Tax*] *Act* contains a general provision [referring to paragraph 12(1)(*o*)] requiring royalties to be included in income. The [*Syncrude Remission Order*] contains specific relief against the tax payable on royalties for the Syncrude Project as originally conceived. So, the [*Income Tax*] *Act* requires inclusion of a "royalty" "receivable" by Alberta, while the [*Syncrude Remission Order*] allows remission of the tax payable on the "royalty" "receivable" by Alberta "with respect to the Syncrude Project". In my view, Imperial's claim for remission flows from the intersection of the general requirement of the [*Income Tax*] *Act* and the specific remedy of the [*Syncrude Remission Order*]. Its claim is consistent with the purpose for which

> the royalty provisions were enacted – to uncouple federal tax liability from provincial royalty arrangements. According to Imperial's approach, its federal tax situation remained the same notwithstanding the changes in Alberta's royalty regime. The federal government was no worse off as a result. It seems to me that, just as the royalties attributable to profits at Aurora are not eligible for remission under the [*Syncrude Remission Order*], nor should the Aurora credits be used to reduce the eligible royalty.

[26] The Crown has appealed the judgment. Imperial has cross-appealed on the basis that its entitlement to interest should be determined as though a remission under the *Syncrude Remission Order* is the same as a refund of a tax overpayment under the *Income Tax Act*, with the result that interest would accrue on the entire amount of the remission for 1997, not just on the amount of the alleged shortfall.

Appeal

[27] There is very little jurisprudence on the legal effect of a remission order. The leading case is *Perley v. Canada* (1999), 240 N.R. 183, [1999] 3 C.T.C. 180, 99 D.T.C. 5176 (F.C.A.). The issue in that case was whether a dispute as to the correct application of a tax remission order could be resolved by the Tax Court of Canada on a statutory appeal from an income tax assessment. In such an appeal, the Tax Court is required to determine whether the assessment is correct in fact and in law. The remission order in issue in that case essentially was intended to remit Part I tax payable by an Indian on employment income paid by an employer residing on an Indian reserve. Justice Létourneau, speaking for the Court, explained that as a matter of law, a tax remission order cannot affect the correctness of an income tax assessment, which must be

determined solely on the basis of the *Income Tax Act* and the *Income Tax Regulations*. A tax remission order applies at the collection stage. It can do no more than relieve a person from a tax debt or oblige the Crown to refund a tax debt that has been paid.

[28] For that reason, the April 28, 1976 letter from the senior Finance official to the tax officials considering Imperial's request for an advance income tax ruling cannot be taken to mean literally what it appears to say. It is legally impossible for a remission order to "operate as an amendment to the *Income Tax Act* for all purposes."

[29] However, it is legally possible for a remission order to grant a remission of tax that is intended to reverse the effect of the application of a particular provision of the *Income Tax Act* to a particular person for a particular year. Perhaps that is all the April 28, 1976 letter was intended to mean. In any event, that is the kind of remission order that was granted in this case.

[30] Where a remission order of this kind is granted, it may be convenient to compute the amount of the remission on the basis of a hypothetical income tax return in which the particular provision is assumed not to exist. That apparently is the analytical technique employed in this case. However, that analytical exercise should not be confused with the actual determination of the person's tax liability under the *Income Tax Act*.

[31] As explained above, the parties do not agree on the amount of Part I tax remitted for 1997 under the *Syncrude Remission Order*. The dispute is whether the Crown was correct when, in

computing the amount of the remission for 1997, the amount of the income inclusion under paragraph 12(1)(*o*) with respect to the Syncrude royalty receivable by Alberta was determined to be the actual amount of the royalty receivable by Alberta under the Alberta Crown Agreement as amended by Amendment No. 6. Imperial argues that the amount of the income inclusion should have been determined as the amount of the royalties that would have been receivable by Alberta if the Agreement had not permitted a deduction for the Aurora capital credits.

[32] The difference is well illustrated by the simplified hypothetical example set out in paragraph 25 of Justice O'Reilly's reasons, which I have reproduced below with slight modifications to simplify it further:

	Column 1 **No royalty amendments**	*Column 2* **With royalty amendments, without remission**	*Column 3* **With remission (per Crown)**	*Column 4* **With remission (per Imperial)**
Gross revenue	$1,500	$1,500	$1,500	$1,500
Crown royalty payable	-$100	-$100	-$100	-$100
Other deductions	-$800	-$800	-$800	-$800
Net accounting income	$600	$600	$600	$600
Crown royalty added per p. 12(1)(*o*)		$100	$100	$100
Taxable income	$600	$700	$700	$700
Royalty eligible for remission			$100	$120
Revised income	$600	$700	$600	$580
Tax payable	$174.72	$203.84	$174.72	$168.90

[33] This table illustrates that, before the enactment of paragraph 12(1)(*o*) of the *Income Tax Act*, Imperial would have been taxed on its income net of the Alberta royalty, which in this

example is $100 (Column 1). Paragraph 12(1)(*o*) required Imperial to include the $100 royalty in its income for income tax purposes (Column 2). Columns 3 and 4 illustrate the change represented by the *Syncrude Remission Order*, as understood by the Crown and Imperial respectively. The Crown takes the position that the amount of royalty eligible for remission is $100, the amount of the royalty actually paid to Alberta (Column 3). Imperial takes the position that, if the royalty payable to Alberta would have been $120 but for the Aurora capital credits, the amount of royalty eligible for remission should be $120 (Column 4).

[34] In my view, the error in Imperial's position stems from a flawed premise, which is that when the Alberta Crown Agreement was amended to permit Imperial to deduct the Aurora capital credits in computing the royalty receivable by Alberta in 1997, the amount of the remission was required to be determined on the basis of an allocation of the resulting royalty between the Aurora Leases and Leases 17 and 22. I disagree respectfully with Justice O'Reilly's analysis in paragraph 46 of his reasons, because it is based on the same flawed premise.

[35] The allocation proposed by Imperial cannot be accepted because it is antithetical to the essential nature of a royalty, which necessarily is linked to production from a particular property, to make an allocation to a non-producing property. The result necessarily is a negative royalty on the non-producing property and a higher positive royalty on the producing property. That cannot be.

[36] In my view, Justice O'Reilly was wrong to conclude, in relation to 1997, that there was a difference between the Syncrude royalty receivable by Alberta as determined for the purposes of paragraph 12(1)(*o*), and the royalty receivable by Alberta as determined for the purposes of the *Syncrude Remission Order*. All of the production for 1997 was from Leases 17 and 22. Therefore, there is no basis for differentiating between the production from the Syncrude Project as defined in the *Syncrude Remission Order* (i.e., the production from Leases 17 and 22), and the production from the Expanded Syncrude Project contemplated by Amendment No. 6, which in 1997 was also the production from Leases 17 and 22.

[37] In my view, the provisions of Amendment No. 6 that permitted the deduction of the Aurora capital credits resulted in a reduced royalty payable to Alberta in respect of the production from Leases 17 and 22. In other words, the royalty payable to Alberta with respect to the Syncrude Project (as defined in the *Syncrude Remission Order*) was the royalty payable to Alberta under the Alberta Crown Agreement as amended by Amendment No. 6. I conclude that the Crown was correct in determining the amount of the remission for 1997 as it did.

Cross-appeal

[38] The *Syncrude Remission Order* by its terms remits tax payable under Part I of the *Income Tax Act*. The *Syncrude Remission Order* does not mention interest.

[39] I note from item C of the advance income tax ruling quoted above that the tax authorities determined in 1976 that the *Syncrude Remission Order* should be administered on the basis that

the determination of Imperial's liability to pay interest on unpaid Part I tax, or on late or deficient instalments of Part I tax, must take the remitted Part I tax into account. Neither party suggests that this is incorrect in law. The issue raised in the cross-appeal is a different one, which is whether Imperial is entitled to interest on the remitted tax pursuant to section 164 of the *Income Tax Act*.

[40] I agree with the Crown that there is no statute or regulation providing any entitlement to interest on a payment made to a person pursuant to a remission of tax, even if the remission order results in a refund of a tax debt that has been paid. I also agree that there is no merit to the argument of Imperial that it should be entitled to an award of interest on the basis that if no interest is paid, the Crown is unjustly enriched.

[41] It remains only to consider the argument of Imperial that, because the *Syncrude Remission Order* reduces Imperial's Part I tax payable, the amount of the remission should be taken into account in determining the entitlement of Imperial to refund interest pursuant to section 164 of the *Income Tax Act*. Justice O'Reilly did not address this point in his reasons but ordered that interest would be payable on the amount of his judgment according to subsection 31(2) of the *Crown Liability and Proceedings Act*. The Crown had conceded, appropriately in my view, that if Imperial was entitled to judgment for a shortfall in the remission for 1997, subsection 31(2) of the *Crown Liability and Proceedings Act* would apply to the judgment.

[42] Refund interest is payable under section 164 of the *Income Tax Act* only on an "overpayment" for a particular year. A taxpayer's "overpayment" for a year is defined in subsection 164(7) essentially as the amount by which the total of all amounts paid on account of the taxpayer's tax liability for that year exceeds the amount of the liability. Imperial argues that it is entitled to refund interest for 1997 because it paid more on account of its 1997 tax liability than the amount of its 1997 tax liability as finally determined, taking into account the amount of Part I tax remitted for 1997 by the *Syncrude Remission Order*.

[43] In my view, Imperial has not established its entitlement to refund interest for 1997.

[44] It is possible to discern from the record the amount of Imperial's 1997 tax liability as assessed under the *Income Tax Act* and *Regulations*, and it is also possible to discern the amount of the Part I tax remission for that year. However, it is not possible to discern what payments, if any, Imperial made on account of its 1997 tax liability.

[45] Therefore, even if I were to assume that Imperial's argument on the cross-appeal is correct in law, it is impossible to determine from the record whether Imperial is entitled to refund interest. That is because the record does not establish that the total of all payments made by Imperial on account of its 1997 tax liability was greater than its 1997 tax liability after taking the remission into account.

[46] In these circumstances, Imperial's cross-appeal must fail on the facts. It is not necessary to express an opinion on Imperial's legal argument on the cross-appeal, and I decline to do so.

Conclusion

[47] For the reasons stated above, I would allow the appeal, dismiss the cross-appeal, and set aside the judgment of the Federal Court. Making the order that should have been made, I would dismiss the action of the respondents Imperial Oil Resources Limited and Imperial Oil Resources Ventures Limited. The Crown is entitled to its costs of the appeal and the cross-appeal, and its costs in the Federal Court.

"K. Sharlow"
J.A.

"I agree.
Carolyn Layden-Stevenson J.A."

"I agree.
C. Michael Ryer J.A."

APPENDIX

Syncrude Remission Order

C.R.C., c. 794

Order respecting the remission of income tax for the Syncrude Project

1. This Order may be cited as the *Syncrude Remission Order*.

2. In this Order,

"barrels" means barrels of synthetic crude oil from Leases 17 and 22 pursuant to the Syncrude Project; (*barils*)

"condition" means that the fiscal programs as they relate to the Syncrude Project in effect at the commencement of the Syncrude Project have been revised in such a manner as to have significant adverse economic effect on the Syncrude Project; (*condition*)

"Crown" means Her Majesty in right of the Province of Alberta; (*Couronne*)

"leased substances" means all substances the participant has recovered pursuant to Leases 17 and 22; (*matières louées*)

"Leases 17 and 22" means Government of Alberta Bituminous Sands Leases Nos. 17 and 22, excluding that portion of Lease No. 17 that is subject to an Agreement dated September 20, 1972 as amended by an Agreement dated September 26, 1972 whereby Great Canadian Oil Sands Limited was granted a sublease of lands contained in Lease No. 17, and includes any other documents or titles that extend the duration of Leases 17 and 22;

Décret de remise relatif à Syncrude

C.R.C., ch. 794

Décret concernant la remise 'impôt sur le revenu pour le projet Syncrude

1. Le présent décret peut être cité sous le titre : *Décret de remise relatif à Syncrude*.

2 Dans le présent décret,

« barils » désigne des barils de pétrole brut synthétique qui proviennent des concessions 17 et 22 dans le cadre du projet Syncrude; (*barrels*)

« concessions 17 et 22 » désigne les concessions n°s 17 et 22 des sables bitumineux du gouvernement de l'Alberta, sauf la partie de la concession n° 17 qui est assujettie à un accord daté du 20 septembre 1972, modifié par un accord daté du 26 septembre 1972, par lequel il a été concédé à la Great Canadian Oil Sands Limited un sous-bail des terres comprises dans la concession n° 17, et comprend tous les autres documents ou titres qui prolongent la durée des concessions 17 et 22; (*Leases 17 and 22*)

« condition » désigne la révision des programmes fiscaux, applicables lors du début du projet Syncrude, de manière à lui causer des difficultés d'ordre économique significatives; (*condition*)

« Couronne » désigne Sa Majesté du chef de la province d'Alberta; (*Crown*)

« dispositions relatives aux redevances » désigne les dispositions contenues aux alinéas 12(1)*o*), 18(1)*m*) et aux paragraphes 69(6) à (10) de la *Loi de l'impôt sur le revenu*; (*royalty provisions*)

(*concessions 17 et 22*)

"participant" means

(*a*) Canada-Cities Service Ltd., a body corporate, incorporated under the laws of Canada and having its head office at the City of Calgary, in the Province of Alberta,

(*b*) Imperial Oil Limited, a body corporate, incorporated under the laws of Canada and having its head office at the municipality of Metropolitan Toronto, in the Province of Ontario,

(*c*) Gulf Oil Canada Limited, a body corporate, incorporated under the laws of Canada and having its head office at the City of Toronto, in the Province of Ontario,

(*d*) the Crown as represented by the Minister of Energy and Resources for the Province of Alberta,

(*e*) Her Majesty in right of Canada as represented by the Minister of Energy, Mines and Resources for Canada, and

(*f*) Ontario Energy Corporation, a body corporate, incorporated by Special Act of the Legislature of the Province of Ontario and having its head office at the City of Toronto, in the Province of Ontario,

or any or all of them or their successors or assignees as long as they retain a share in the Syncrude Project; (*participant*)

"royalty provisions" means the provisions contained in paragraphs 12(1)(*o*) and 18(1)(m), and subsections 69(6) to (10) of the *Income Tax Act*;

« matières louées » désigne toutes matières que le participant a récupérées en vertu des concessions 17 et 22; (*leased substances*)

« participant » désigne

a) Canada-Cities Service Ltd., une personne morale, constituée en corporation en vertu des lois du Canada et dont le siège social est situé dans la ville de Calgary, province d'Alberta,

b) Imperial Oil Limited, une personne morale, constituée en corporation en vertu des lois du Canada et dont le siège social est situé dans la ville de Toronto, province d'Ontario,

c) Gulf Oil Canada Limited, une personne morale, constituée en corporation en vertu des lois du Canada et dont le siège social est situé dans la ville de Toronto, province d'Ontario,

d) la Couronne, représentée par le ministre de l'Énergie et des Ressources de la province d'Alberta,

e) Sa Majesté du chef du Canada, représentée par le ministre de l'Énergie, des Mines et des Ressources pour le Canada, et

f) Ontario Energy Corporation, une personne morale, constituée en corporation par une loi spéciale de l'assemblée législative de la province de Toronto [d'Ontario] et dont le siège social est situé dans la ville de Toronto, province d'Ontario,

ou l'un d'eux ou tous à la fois ou leurs successeurs ou cessionnaires, aussi longtemps qu'ils détiennent une action dans le projet Syncrude; (*participant*)

« pétrole brut synthétique » désigne un mélange, constitué en grande partie de

(*dispositions relatives aux redevances*)

"Syncrude Project" means the scheme of the participant for the recovery of leased substances from Leases 17 and 22; (*projet Syncrude*)

"synthetic crude oil" means a mixture, mainly of pentanes and heavier hydrocarbons, that may contain sulphur compounds, that is derived from crude bitumen and that is liquid at the time its volume is measured or estimated. (*pétrole brut synthétique*)

pentanes et d'hydrocarbures plus lourds, qui peut contenir des composés de soufre, qui est dérivé du bitume brut et qui est à l'état liquide lorsque son volume est mesuré ou évalué; (*synthetic crude oil*)

« projet Syncrude » désigne le plan du participant en vue de la récupération des matières louées des concessions 17 et 22. (*Syncrude Project*)

3. (1) Subject to subsection (2), remission is hereby granted to each participant of any tax payable for a taxation year pursuant to Part I of the *Income Tax Act* as a result of the royalty provisions being applicable to

(*a*) amounts receivable and the fair market value of any property receivable by the Crown as a royalty, tax, rental or levy with respect to the Syncrude Project, or as an amount however described, that may reasonably be regarded as being in lieu of any of the preceding amounts;

(*b*) dispositions of leased substances to the Crown by the participant; and

(*c*) acquisitions of leased substances from the Crown by the participant.

(2) No remission shall be granted pursuant to this Order to a participant in respect of a taxation year of that participant that commences after

(*a*) the recovery of 1.1 billion barrels, where the Governor in Council revokes this Order upon being satisfied on the report of the Minister of Finance that the

3. (1) Sous réserve du paragraphe (2), remise est accordée à chaque participant de tout impôt payable pour une année d'imposition en vertu de la Partie I de la *Loi de l'impôt sur le revenu* et qui résulte de l'application des dispositions relatives aux redevances aux

a) montants à recevoir et à la juste valeur marchande des biens à recevoir par la Couronne à titre de redevance, d'impôt, de loyer ou de prélèvement à l'égard du projet Syncrude, ou à titre de montant, quelle que soit la manière dont il est décrit, qui peut raisonnablement être considéré comme remplaçant un des montants qui précèdent;

b) aliénations en faveur de la Couronne, par le participant, de matières louées; et

c) acquisitions de la Couronne, par le participant, de matières louées.

(2) Aucune remise n'est accordée au participant en vertu du présent décret à l'égard d'une année d'imposition de ce participant qui commence après

a) la récupération de 1.1 milliard de barils, lorsque le gouverneur en conseil abroge le présent décret étant convaincu, à la suite du rapport du ministre des Finances, que la

condition exists prior to the recovery of 1.1 billion barrels,

(*b*) the recovery of the number of barrels recovered on the date the Governor in Council revokes this Order upon being satisfied on the report of the Minister of Finance that the condition exists if that date is after the recovery of more than 1.1 billion barrels and less than 2.1 billion barrels,

(*c*) the recovery of 2.1 billion barrels, or

(*d*) December 31, 2003,

whichever first occurs.

condition se réalise avant la récupération de 1.1 milliard de barils,

b) la récupération du nombre de barils récupérés à la date où le gouverneur en conseil abroge le présent décret étant convaincu, à la suite du rapport du ministre des Finances, que la condition se réalise, si l'abrogation a lieu après la récupération de plus de 1.1 et de moins de 2.1 milliards de barils,

c) la récupération de 2.1 milliards de barils, ou

d) le 31 décembre 2003,

selon celui des événements qui se produit en premier.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-520-08

(AN APPEAL AND CROSS-APPEAL FROM THE ORDER OF MR. JUSTICE O'REILLY OF THE FEDERAL COURT, DATED SEPTEMBER 17, 2008, IN FEDERAL COURT FILE NO. T-1056-02.)

STYLE OF CAUSE:	The Attorney General of Canada v. Imperial Oil Resources Limited et al
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 28, 2009
REASONS FOR JUDGMENT BY:	SHARLOW J.A.
CONCURRED IN BY:	LAYDEN-STEVENSON J.A. RYER J.A.
DATED:	November 12, 2009

APPEARANCES:

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