

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20131119**

**Docket: A-288-12**

**Citation: 2013 FCA 269**

**CORAM: SHARLOW J.A.  
STRATAS J.A.  
NEAR J.A.**

**BETWEEN:**

**GLOBAL CASH ACCESS (CANADA) INC.**

**Appellant  
(Respondent on cross-appeal)**

**and**

**HER MAJESTY THE QUEEN**

**Respondent  
(Appellant on cross-appeal)**

Heard at Toronto, Ontario, on September 17, 2013.

Judgment delivered at Ottawa, Ontario, on November 19, 2013.

**REASONS FOR JUDGMENT BY:**

**SHARLOW J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
NEAR J.A.**

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**REASONS FOR JUDGMENT**

**SHARLOW J.A.**

[1] Global Cash Access (Canada) Inc. is appealing (and the Crown is cross-appealing) the judgment of Justice Woods of the Tax Court of Canada that allowed in part Global's appeal of an assessment of goods and services tax (GST) under the *Excise Tax Act*, R.S.C. 1985, c. E-15, in the amount of approximately \$2.2 million.

[2] The GST in issue was imposed on certain commissions paid by Global to two corporations that operated casinos in Ontario. (In these reasons, I use the term “Casinos” to refer to the two corporations and the casinos.) Global argued in the Tax Court, and maintains in this Court, that the commissions are exempt from GST because they were paid as consideration for a “financial service” as defined in subsection 123(1) of the *Excise Tax Act*. Justice Woods concluded that 75% of the commissions are subject to GST, but the remaining 25% is exempt.

[3] The parties agree that the total amount of the commissions should be treated the same way, without allocation. Global argues that the commissions are entirely exempt from GST because they are consideration for a supply that falls within the statutory definition of “financial service”. The Crown argues that the commissions are entirely taxable because they are not consideration for a “financial service” as defined.

#### Standard of review

[4] As this is an appeal from a judgment after a trial, the standard of review is governed by the principles in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The resolution of this appeal requires an interpretation of the statutory definition of “financial service”, and an interpretation of the contracts under which Global paid the commissions in issue. These are questions of law that are reviewable on the standard of correctness (*City of Calgary v. Canada*, 2010 FCA 127, affirmed 2012 SCC 20 with no discussion on this point); *McNeil v. Canada (Employment Insurance Commission)*, 2009 FCA 306.

[5] The interpretation of a contract, although it is a question of law, must be informed by what is sometimes referred to as the factual matrix, which includes the circumstances in which the contracts were entered into, and the commercial objectives of the parties. Findings of fact concerning the factual matrix are reviewable on a more deferential standard, palpable and overriding error. In this case there is no factual dispute.

### Facts

[6] During the period relevant to his appeal, the business of Global included providing casino patrons with convenient access to cash through dedicated computer terminals owned by Global and installed by Global in the casinos. The practical result of this activity – referred to in the relevant contract as a “Funds Access Service” – is well described by Justice Woods as follows (paragraphs 12 to 14 of her reasons):

12. [...] Global’s business enables patrons of the Casinos to use their credit cards to obtain cash. Global deals with VISA and Mastercard credit card associations and has merchant status under the rules of these associations. As a merchant, Global “sells” cheques to the patrons which are then exchanged for cash. Patrons can acquire cash up to the purchase limit on their cards, which is typically much higher than the amount available on a cash advance obtained through an ATM.

13. From the standpoint of the patrons, the transaction is similar to a typical credit card transaction used to purchase goods, except that a fee is charged. The process is highly automated and approvals from the card issuing banks are obtained quickly.

14. From the standpoint of the card issuing banks, the transactions are subject to more scrutiny than a typical credit card transaction. Global is able to satisfy the banks’ requirements through a combination of sophisticated technology, a relatively large infrastructure, and a multitude of business relationships.

[7] During the period relevant to this appeal, Global gained access to the Casinos through written contracts. The contracts are substantially the same and the parties referred to one of them, the contract dated December 1, 1995 related to two Casinos in Windsor, as an exemplar.

[8] The purpose of the contract, as stated in the preamble, was that Global would become a supplier of Funds Access Services within the Casinos, and that the Casinos would receive a commission for each completed transaction, the amount of which would vary depending upon the amount of cash provided to the casino patron:

<u>Cash provided</u>	<u>Commission</u>
Up to \$420	\$13
\$420 to \$1,410	\$17
\$1411 or more	\$24

[9] The contract also provides for a “transaction volume incentive” which increased the amount of the commission once the volume reached certain levels. The table in the contract that describes the transaction volume incentive reads as follows:

<u>Transaction volume incentive</u>	
\$200,000 to \$250,000	\$1
\$250,001 to \$300,000	\$2
Over \$300,000	\$3

[10] Paragraph 1 of the contract gives Global “the right to be the sole and exclusive supplier” of Funds Access Services in the Casinos for the term of the contract. Pursuant to paragraph 2 of the contract, the equipment and infrastructure required by Global to provide its Funds Access Service was to be provided by Global and at its cost, except that the Casinos were required to install and maintain the required telephone lines.

[11] Paragraph 3 of the contract describes in some detail the procedures required to complete a Funds Access Service transaction. Based on that provision and the facts as found by Justice Woods, a transaction was considered to be completed when the following steps were correctly taken:

- (a) The credit card would be swiped at one of Global’s dedicated computer terminals in a Casino. If the terminal was located in one of Global’s kiosks in a public area of the Casino, the patron would swipe the card. If the terminal was located in the cashier area of the Casino, a cashier would swipe the card.
- (b) The patron or the cashier, as the case may be, would be prompted to key the amount of money requested by the casino patron. That would initiate Global’s automated approval process.
- (c) If the request was approved, a payment instrument – the “cheque” referred to in paragraph 12 of Justice Woods reasons (quoted above) – would be printed, showing the Casino as the payee. If the transaction was initiated by the patron at a kiosk, the patron would take the payment instrument to a cashier.

- (d) The cashier would obtain an authorization number from Global, either electronically or by telephone. The cashier would verify that the transaction was on or after the valid date and on or before the expiration date embossed on the patron's credit card, and would ensure that the payment instrument contained a legible imprint of the credit card.
- (e) The cashier would also ensure that the payment instrument contained the information required to identify the patron as the owner of the credit card, and the information required to identify the bank that issued the credit card. According to the documentary evidence in the record, the identifying information about the patron would be hand-written on the payment instrument, either by the patron or by the cashier based on information provided by the patron.
- (f) The patron would acknowledge, by signature and initials in the appropriate spaces on the payment instrument, the amount of the cash requested and the amount of the fee the patron was required to pay to Global, which varied according to the amount of cash obtained. For example, for cash in the amount of \$71 to \$140, the fee was \$17, and for cash in the amount of \$3,521 to \$7,050, the fee was \$179.25.
- (g) The cashier would pay the patron the amount of cash requested, and would retain the payment instrument for the Casinos.

[12] The Casinos were entitled to a commission only for transactions that were correctly completed in accordance with the terms of the contract. Paragraph 4 of the contract provides that no commission would be paid for a transaction in respect of which Global was unsuccessful in obtaining payment from the patron. Paragraph 4 also provides that a transaction not completed in accordance with paragraph 3 of the contract would be “charged back” to the Casinos (including the amount of cash provided plus the service fee payable by the patron). Justice Woods found that the Casinos’ losses due to incorrectly completed transactions were very small (paragraph 27 of her reasons).

[13] The Casinos deposited each payment instrument into its own bank account as it would deposit a cheque. Absent any issue as to whether the transaction was correctly completed, that would ensure that the Casinos would be reimbursed for the cash it paid to the patron in the course of the transaction. Global, as a “merchant” *vis-à-vis* the bank that issued the credit card, would collect from the issuer the amount of the cash plus the patron’s service fee, and the credit card issuer would bill that amount to the patron.

#### Statutory framework

[14] Pursuant to subsection 165(1) of the *Excise Tax Act*, a person who pays consideration for a taxable supply made in the course of a business activity is required to pay GST equal to the statutory rate multiplied by the value of the consideration. That provision reads as follows:

**165.** (1) Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply

**165.** (1) Sous réserve des autres dispositions de la présente partie, l’acquéreur d’une fourniture taxable effectuée au Canada est tenu de payer à



calculated at the rate of 5% on the value of the consideration for the supply.

Sa Majesté du chef du Canada une taxe calculée au taux de 5 % sur la valeur de la contrepartie de la fourniture.

The statutory rate of GST has changed from time to time. In this case, no issue arises with respect to the GST rate.

[15] In the context of this appeal, the word “consideration” should be understood to mean anything that would be consideration under the law of contract, and “taxable supply” should be understood to include anything supplied in the course of a commercial activity except a “financial service” as defined in subsection 123(1) of the *Excise Tax Act*. It is undisputed that the business of the Casinos is a commercial activity, and the acts of Casinos pursuant to its contract with Global are acts in the course of that commercial activity.

[16] The statutory definition of “financial service” is lengthy and complex. The full definition is set out in an appendix to these reasons. The portions of the definition that are most relevant to this case are reproduced here:

“financial service” means

« service financier »

...

[...]

(g) the making of any advance, the granting of any credit or the lending of money,

g) l’octroi d’une avance ou de crédit ou le prêt d’argent;

...

[...]

(i) any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has

i) un service rendu en conformité avec les modalités d’une convention portant sur le paiement de montants visés par une pièce justificative de carte de crédit ou de paiement;

been issued,

...

(*l*) the agreeing to provide, or the arranging for, a service that is

(i) referred to in any of paragraphs (*a*) to (*i*), and

(ii) not referred to in any of paragraphs (*n*) to (*t*) ...

...

but does not include

...

(*r.4*) a service (other than a prescribed service) that is preparatory to the provision or the potential provision of a service referred to in any of paragraphs (*a*) to (*i*) and (*l*), or that is provided in conjunction with a service referred to in any of those paragraphs, and that is

(i) a service of collecting, collating or providing information, or

(ii) a market research, product design, document preparation, document processing, customer assistance, promotional or advertising service or a similar service,

(*r.5*) property (other than a financial instrument or prescribed property) that is delivered or made available to a person in conjunction with the rendering by the person of a service referred to in any of paragraphs (*a*) to (*i*) and (*l*) ....

[...]

*l*) le fait de consentir à effectuer, ou de prendre les mesures en vue d'effectuer, un service qui, à la fois :

(i) est visé à l'un des alinéas *a*) à *i*),

(ii) n'est pas visé aux alinéas *n*) à *t*); [...]

[...]

La présente définition exclut :

[...]

*r.4*) le service, sauf un service visé par règlement, qui est rendu en préparation de la prestation effective ou éventuelle d'un service visé à l'un des alinéas *a*) à *i*) et *l*), ou conjointement avec un tel service, et qui consiste en l'un des services suivants :

(i) un service de collecte, de regroupement ou de communication de renseignements,

(ii) un service d'étude de marché, de conception de produits, d'établissement ou de traitement de documents, d'assistance à la clientèle, de publicité ou de promotion ou un service semblable;

*r.5*) un bien, sauf un effet financier ou un bien visé par règlement, qui est livré à une personne, ou mis à sa disposition, conjointement avec la prestation par celle-ci d'un service visé à l'un des alinéas *a*) à *i*) et *l*) [...]

[17] This definition reflects amendments to the *Excise Tax Act* made by section 55 of S.C. 2010, c. 12, a budget implementation statute. Subsection 55(5) of the amending statute deems those amendments to have come into force on December 17, 1990, subject to certain exceptions. None of those exceptions apply in this case. Therefore, even though the commissions in issue were paid from 1996 through 2004, the amended definition applies.

[18] The decision of the Tax Court raises an issue as to whether the commissions were consideration for more than one supply, not all of which fall within the statutory definition of “financial service”. That requires consideration of sections 138 and 139 of the *Excise Tax Act*.

[19] Section 138 provides that where a single consideration is paid for two different supplies and one is incidental to the other, the incidental supply is deemed to be part of the other supply. It reads as follows:

**138.** For the purposes of this Part,  
where

(a) a particular property or service is supplied together with any other property or service for a single consideration, and

(b) it may reasonably be regarded that the provision of the other property or service is incidental to the provision of the particular property or service,

the other property or service shall be deemed to form part of the particular property or service so supplied.

**138.** Pour l'application de la présente partie, le bien ou le service dont la livraison ou la prestation peut raisonnablement être considérée comme accessoire à la livraison ou à la prestation d'un autre bien ou service est réputé faire partie de cet autre bien ou service s'ils ont été fournis ensemble pour une contrepartie unique.

[20] Section 139 provides that where a single consideration is paid for a “financial service” and something else that is not a “financial service”, the entire supply is treated as a “financial service” if certain conditions are met. Section 139 reads as follows:

**139.** For the purposes of this Part, where

(a) one or more financial services are supplied together with one or more other services that are not financial services, or with properties that are not capital properties of the supplier, for a single consideration,

(b) the financial services are related to the other services or the properties, as the case may be,

(c) it is the usual practice of the supplier to supply those or similar services, or those or similar properties and services, together in the ordinary course of the business of the supplier, and

(d) the total of all amounts, each of which would be the consideration for a financial service so supplied if that financial service had been supplied separately, is greater than 50% of the total of all amounts, each of which would be the consideration for a service or property so supplied if that service or property had been supplied separately,

the supply of each of the services and properties shall be deemed to be a supply of a financial service.

**139.** Pour l'application de la présente partie, dans le cas où au moins un service financier est fourni avec au moins un service non financier ou un bien qui n'est pas une immobilisation du fournisseur, pour une contrepartie unique, la fourniture de chacun des services et biens est réputée être une fourniture de service financier si les conditions suivantes sont réunies :

a) le service financier est lié au service non financier ou au bien;

b) le fournisseur a l'habitude de fournir ces services ou des services semblables, ou des biens et des services semblables, ensemble dans le cours normal de son entreprise;

c) le total des montants dont chacun représenterait la contrepartie d'un service financier ainsi fourni, s'il était fourni séparément, compte pour plus de la moitié du total des montants dont chacun représenterait la contrepartie d'un service ou d'un bien ainsi fourni, s'ils étaient fournis séparément.

Procedural history

[21] The Casinos initially believed that the commissions it received from Global in respect of Funds Access Service transactions were exempt from GST. Accordingly, they did not collect GST from Global on the commissions. The Minister of National Revenue concluded otherwise and initially assessed Global for the uncollected GST. The Casinos paid the GST and were reimbursed by Global. Global then filed a rebate application on the basis that the GST had been paid in error. The Minister did not agree and assessed Global for the GST. The notice of assessment permitted Global to object and, when that did not succeed, to appeal to the Tax Court.

[22] As indicated above, the issue before the Tax Court was whether the commissions paid by Global to the Casinos were consideration for a “financial service” supplied by the Casinos. Justice Woods concluded that what the Casinos supplied to Global in exchange for the commission was a bundle of supplies comprised of three elements, described as follows at paragraph 63 of her reasons:

63. Accordingly, there are three main aspects to the bundle of supplies by the Casinos: (1) allowing kiosks on the premises, (2) providing support services at the cashier cages such as transaction procedures and initiating transactions on behalf of patrons, and (3) cashing Global’s cheques.

[23] She held that these three elements were not sufficiently interdependent to constitute a “single supply”, and that none of the three elements could properly be characterized as incidental to the other. Therefore, she considered it necessary to determine which of the three elements, if any, fell within the statutory definition of “financial service”. She concluded that only the third element, “cashing Global’s cheques”, fell within the statutory definition. She estimated that the third element represented 25% of the total value of what the Casinos supplied to Global and on that basis she concluded that only 25% of the commission was exempt from GST.

Discussion

[24] The parties agree that this was a case of a single supply by the Casinos, not a supply of several things of which only one was within the statutory definition of “financial service”. I agree.

[25] It is clear from the contract and from the undisputed facts that none of the three elements of the supply as identified by Justice Woods had commercial efficacy on its own. More importantly, there is no evidence that Global would have been prepared to pay consideration to the Casinos for any of the three elements on its own. Since the three elements are integrally connected and there is a single consideration, there is a single supply.

[26] To determine whether that single supply falls within the statutory definition of “financial service”, the questions to be asked are these: (1) Based on an interpretation of the contracts between the Casinos and Global, what did the Casinos provide to Global to earn the commissions payable by Global? (2) Does that service fall within the statutory definition of “financial service”?

[27] The Casinos earned commissions for completed Funds Access Service transactions. To complete those transactions, the Casinos were required to provide (1) access to the physical premises of the Casino for Global’s equipment (such as its dedicated computer terminals and kiosks), (2) the clerical services of the cashiers, and (3) the cash required to pay the patrons.

[28] On any reasonable view of the evidence, the commercial efficacy of the arrangement depends critically on access to the Casinos’ cash. Global is in the business of providing the means by which holders of credit cards can be furnished with cash. Global entered into the contracts with

the Casinos specifically to ensure that patrons of the Casinos could be furnished with cash on the Casinos' premises. Unless the Casinos were willing and able to supply the cash, there would have been no point in Global setting up its equipment on the Casinos' premises or specifying the documentation required to complete the transactions.

[29] In my view, based on that understanding of the contract between the Casinos and Global, each completed transaction falls within paragraph (g) of the statutory definition of "financial service" ("the making of any advance, the granting of any credit or the lending of money" or *« l'octroi d'une avance ou de crédit ou le prêt d'argent »*).

[30] I reach that conclusion because the heart of each transaction is an advance of money by the Casinos, disbursed to casino patrons at Global's direction, and repayable by Global. The repayment obligation is performed when the Casino deposits the payment instruments into its bank account and the payments instruments are honoured by Global. The legal obligation of Global to repay the Casinos for the amount of cash advanced may arise because the payment instrument is, in law, a "cheque", but it is also expressed in paragraph 5 of the contract:

5. [Global] agrees to guarantee payment on all [...] payment instruments where the transaction and the payment instrument have been properly completed in accordance with [Paragraph 3].

[31] It is not necessary to determine whether a completed transaction also falls within paragraph (i) or (l) of the statutory definition, but as those provisions were argued, I will comment on them.

[32] In my view, each completed transaction could be seen as literally within paragraph (i) of the statutory definition (“any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has been issued” or « *un service rendu en conformité avec les modalités d’une convention portant sur le paiement de montants visés par une pièce justificative de carte de crédit ou de paiement* »).

[33] Paragraph (i) refers primarily to the contracts that typically exist between the issuers of credit cards and the merchants who wish to have the right to accept those credit cards as payment. Those contracts generally require the merchant to pay the credit card issuer a fee, sometimes expressed as a percentage of credit card sales. The services that the credit card issuer supplies to the merchant for the fee it pays are exempt “financial services” because they fall within paragraph (i).

[34] Global, as a “merchant” *vis-à-vis* the credit card issuers, is receiving a GST exempt service from the credit card issuers because of paragraph (i) of the definition of “financial service”. However, in order to receive that “financial service” in respect of one of the Funds Access Service transactions, Global must ensure that a credit card voucher is completed. It cannot do so directly because of the manner in which it operates its Funds Access Service business. But it can and does require the Casinos to complete a document on its behalf that functions as a credit card voucher. That document is the payment instrument. The completed payment instrument is the means by which Global realizes its rights as a merchant *vis-à-vis* the credit card issuers.

[35] Therefore, it could be said that the payment instrument is a document that, paraphrasing paragraph (i) of the statutory definition of “financial service”, relates to an amount for which a



credit card voucher is issued. It could also be said that the service of completing the payment instrument in a way that complies with the requirements of the credit card issuers is a service within the scope of paragraph (i). However, that does not detract from the conclusion that what the Casino is supplying to Global is also an advance within the scope of paragraph (g), which in my view is more directly applicable in this case.

[36] Some argument was directed at paragraph (l) of the statutory definition of “financial service”, which refers to an agreement to provide, or the arranging for, a service referred to in any of paragraphs (a) to (i). In my view, paragraph (l) has no application in this case. The Casinos are receiving consideration in this case for the services they actually perform, not for an agreement to perform services or for arranging for services to be performed.

[37] I turn now to the portion of the statutory definition of “financial service” that lists the exceptions. The Crown argues that paragraphs (r.4) and (r.5) of the statutory definition apply because under the agreement with Global, the Casinos are providing, respectively, clerical services that include the collection of identifying information about patrons, and access to the physical premises of the Casinos for Global’s terminals and kiosks. Since the Crown is also arguing that there is a single supply, that argument assumes that those are the predominant elements of the supply. Paragraphs (r.4) and (r.5) read as follows:

(r.4) a service (other than a prescribed service) that is preparatory to the provision or the potential provision of a service referred to in any of paragraphs (a) to (i) and (l), or that is provided in conjunction with a service referred to in

r.4) le service, sauf un service visé par règlement, qui est rendu en préparation de la prestation effective ou éventuelle d’un service visé à l’un des alinéas a) à i) et l), ou conjointement avec un tel service, et qui consiste en l’un des

any of those paragraphs, and that is

- (i) a service of collecting, collating or providing information, or
- (ii) a market research, product design, document preparation, document processing, customer assistance, promotional or advertising service or a similar service,

(r.5) property (other than a financial instrument or prescribed property) that is delivered or made available to a person in conjunction with the rendering by the person of a service referred to in any of paragraphs (a) to (i) and (l) ....

services suivants :

- (i) un service de collecte, de regroupement ou de communication de renseignements,
- (ii) un service d'étude de marché, de conception de produits, d'établissement ou de traitement de documents, d'assistance à la clientèle, de publicité ou de promotion ou un service semblable;

r.5) un bien, sauf un effet financier ou un bien visé par règlement, qui est livré à une personne, ou mis à sa disposition, conjointement avec la prestation par celle-ci d'un service visé à l'un des alinéas a) à i) et l)....

[38] The underlying premise of the Crown's argument is that the predominant supply is either the information-gathering aspect of the clerical work of completing the payment instruments, the physical access given to Global for the placement of its computer terminals and kiosks, or both. Given my conclusion as stated in paragraph 25 above, I cannot accept that premise. Therefore, I must conclude that Crown's reliance on paragraphs (r.4) and (r.5) is misplaced.

### Conclusion

[39] For these reasons, I conclude that Global paid the Casinos a commission for all of the steps it took to complete the transactions contemplated by the contract, which constituted a single supply of a service that falls within paragraph (g) of the definition of "financial service" in subsection 123(1) of the *Excise Tax Act*, and does not fall within any statutory exception. It follows that the commissions were not subject to GST and Global is entitled to rebate it claimed.

[40] I would allow Global's appeal and dismiss the Crown's the cross-appeal, both with costs. Making the judgment that should have been made by the Tax Court, I would allow the Tax Court appeal with costs and vacate the assessment.

“K. Sharlow”

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J.A.

## Appendix A

Definition of “financial service” in subsection 123(1) of the Excise Tax Act

**123.** (1) In section 121, this Part and Schedules V to X,

**123.** (1) Les définitions qui suivent s'appliquent à l'article 121, à la présente partie et aux annexes V à X.

...

...

“financial service” means

« service financier »

(a) the exchange, payment, issue, receipt or transfer of money, whether effected by the exchange of currency, by crediting or debiting accounts or otherwise,

a) L'échange, le paiement, l'émission, la réception ou le transfert d'argent, réalisé au moyen d'échange de monnaie, d'opération de crédit ou de débit d'un compte ou autrement;

(b) the operation or maintenance of a savings, chequing, deposit, loan, charge or other account,

b) la tenue d'un compte d'épargne, de chèques, de dépôt, de prêts, d'achats à crédit ou autre;

(c) the lending or borrowing of a financial instrument,

c) le prêt ou l'emprunt d'un effet financier;

(d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument,

d) l'émission, l'octroi, l'attribution, l'acceptation, l'endossement, le renouvellement, le traitement, la modification, le transfert de propriété ou le remboursement d'un effet financier;

(e) the provision, variation, release or receipt of a guarantee, an acceptance or an indemnity in respect of a financial instrument,

e) l'offre, la modification, la remise ou la réception d'une garantie, d'une acceptation ou d'une indemnité visant un effet financier;

(f) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar payment or receipt of money in respect of a financial instrument,

f) le paiement ou la réception d'argent à titre de dividendes, sauf les ristournes, d'intérêts, de principal ou d'avantages, ou tout paiement ou réception d'argent semblable, relativement à un effet financier;

(f.1) the payment or receipt of an amount in full or partial satisfaction of a claim arising under an insurance policy,

f.1) le paiement ou la réception d'un montant en règlement total ou partiel d'une réclamation découlant d'une police d'assurance;

(g) the making of any advance, the granting of any credit or the lending of money,

g) l'octroi d'une avance ou de crédit ou le prêt d'argent;

(h) the underwriting of a financial instrument,

h) la souscription d'un effet financier;

(i) any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has been issued,

i) un service rendu en conformité avec les modalités d'une convention portant sur le paiement de montants visés par une pièce justificative de carte de crédit ou de paiement;

(j) the service of investigating and recommending the compensation in satisfaction of a claim where

j) le service consistant à faire des enquêtes et des recommandations concernant l'indemnité accordée en règlement d'un sinistre prévu par :

(i) the claim is made under a marine insurance policy, or

(i) une police d'assurance maritime,

(ii) the claim is made under an insurance policy that is not in the nature of accident and sickness or life insurance and

(ii) une police d'assurance autre qu'une police d'assurance-accidents, d'assurance-maladie ou d'assurance-vie, dans le cas où le service est fourni :

(A) the service is supplied by an insurer or by a person who is licensed under the laws of a province to provide such a service, or

(A) soit par un assureur ou une personne autorisée par permis obtenu en application de la législation d'une province à rendre un tel service,

(B) the service is supplied to an insurer or a group of insurers by a person who would be required to be so

(B) soit à un assureur ou un groupe d'assureurs par une personne qui serait tenue d'être ainsi autorisée n'eût été

licensed but for the fact that the person is relieved from that requirement under the laws of a province,

le fait qu'elle en est dispensée par la législation d'une province;

(j.1) the service of providing an insurer or a person who supplies a service referred to in paragraph (j) with an appraisal of the damage caused to property, or in the case of a loss of property, the value of the property, where the supplier of the appraisal inspects the property, or in the case of a loss of the property, the last-known place where the property was situated before the loss,

j.1) le service consistant à remettre à un assureur ou au fournisseur du service visé à l'alinéa j) une évaluation des dommages causés à un bien ou, en cas de perte d'un bien, de sa valeur, à condition que le fournisseur de l'évaluation examine le bien ou son dernier emplacement connu avant sa perte;

(k) any supply deemed by subsection 150(1) or section 158 to be a supply of a financial service,

k) une fourniture réputée par le paragraphe 150(1) ou l'article 158 être une fourniture de service financier;

(l) the agreeing to provide, or the arranging for, a service that is

l) le fait de consentir à effectuer, ou de prendre les mesures en vue d'effectuer, un service qui, à la fois :

(i) referred to in any of paragraphs (a) to (i), and

(i) est visé à l'un des alinéas a) à i),

(ii) not referred to in any of paragraphs (n) to (t), or

(ii) n'est pas visé aux alinéas n) à t);

(m) a prescribed service,

m) un service visé par règlement.

but does not include

La présente définition exclut :

(n) the payment or receipt of money as consideration for the supply of property other than a financial instrument or of a service other than a financial service,

n) le paiement ou la réception d'argent en contrepartie de la fourniture d'un bien autre qu'un effet financier ou d'un service autre qu'un service financier;

(o) the payment or receipt of money in settlement of a claim (other than a claim under an insurance policy)

o) le paiement ou la réception d'argent en règlement d'une réclamation (sauf une réclamation

under a warranty, guarantee or similar arrangement in respect of property other than a financial instrument or a service other than a financial service,

en vertu d'une police d'assurance)  
en vertu d'une garantie ou d'un accord semblable visant un bien autre qu'un effet financier ou un service autre qu'un service financier;

(p) the service of providing advice, other than a service included in this definition because of paragraph (j) or (j.1),

p) les services de conseil, sauf un service visé aux alinéas j) ou j.1);

(q) the provision, to an investment plan (as defined in subsection 149(5)) or any corporation, partnership or trust whose principal activity is the investing of funds, of

q) l'un des services suivants rendus soit à un régime de placement, au sens du paragraphe 149(5), soit à une personne morale, à une société de personnes ou à une fiducie dont l'activité principale consiste à investir des fonds, si le fournisseur est une personne qui rend des services de gestion ou d'administration au régime, à la personne morale, à la société de personnes ou à la fiducie :

(i) a management or administrative service, or

(i) un service de gestion ou d'administration,

(ii) any other service (other than a prescribed service),

(ii) tout autre service (sauf un service prévu par règlement);

if the supplier is a person who provides management or administrative services to the investment plan, corporation, partnership or trust,

(q.1) an asset management service,

q.1) un service de gestion des actifs;

(r) a professional service provided by an accountant, actuary, lawyer or notary in the course of a professional practice,

r) les services professionnels rendus par un comptable, un actuaire, un avocat ou un notaire dans l'exercice de sa profession;

(r.1) the arranging for the transfer of

r.1) le fait de prendre des mesures

ownership of shares of a cooperative housing corporation,

en vue du transfert de la propriété des parts du capital social d'une coopérative d'habitation;

(r.2) a debt collection service, rendered under an agreement between a person agreeing to provide, or arranging for, the service and a particular person other than the debtor, in respect of all or part of a debt, including a service of attempting to collect, arranging for the collection of, negotiating the payment of, or realizing or attempting to realize on any security given for, the debt, but does not include a service that consists solely of accepting from a person (other than the particular person) a payment of all or part of an account unless

r.2) le service de recouvrement de créances rendu aux termes d'une convention conclue entre la personne qui consent à effectuer le service, ou qui prend des mesures afin qu'il soit effectué, et une personne donnée (sauf le débiteur) relativement à tout ou partie d'une créance, y compris le service qui consiste à tenter de recouvrer la créance, à prendre des mesures en vue de son recouvrement, à en négocier le paiement ou à réaliser ou à tenter de réaliser une garantie donnée à son égard; en est exclu le service qui consiste uniquement à accepter d'une personne (sauf la personne donnée) un paiement en règlement de tout ou partie d'un compte, sauf si la personne qui effectue le service, selon le cas :

(i) under the terms of the agreement the person rendering the service may attempt to collect all or part of the account or may realize or attempt to realize on any security given for the account, or

(i) peut, aux termes de la convention, soit tenter de recouvrer tout ou partie du compte, soit réaliser ou tenter de réaliser une garantie donnée à son égard,

(ii) the principal business of the person rendering the service is the collection of debt,

(ii) a pour entreprise principale le recouvrement de créances;

(r.3) a service (other than a prescribed service) of managing credit that is in respect of credit cards, charge cards, credit accounts, charge accounts, loan accounts or accounts in respect of any advance and is provided to a person granting,

r.3) le service, sauf un service visé par règlement, qui consiste à gérer le crédit relatif à des cartes de crédit ou de paiement, à des comptes de crédit, d'achats à crédit ou de prêts ou à des comptes portant sur une avance, rendu à une personne qui



or potentially granting, credit in respect of those cards or accounts, including a service provided to the person of

(i) checking, evaluating or authorizing credit,

(ii) making decisions on behalf of the person in relation to a grant, or an application for a grant, of credit,

(iii) creating or maintaining records for the person in relation to a grant, or an application for a grant, of credit or in relation to the cards or accounts, or

(iv) monitoring another person's payment record or dealing with payments made, or to be made, by the other person,

(r.4) a service (other than a prescribed service) that is preparatory to the provision or the potential provision of a service referred to in any of paragraphs (a) to (i) and (l), or that is provided in conjunction with a service referred to in any of those paragraphs, and that is

(i) a service of collecting, collating or providing information, or

(ii) a market research, product design, document preparation, document processing, customer

consent ou pourrait consentir un crédit relativement à ces cartes ou comptes, y compris le service rendu à cette personne qui consiste, selon le cas :

(i) à vérifier, à évaluer ou à autoriser le crédit,

(ii) à prendre, en son nom, des décisions relatives à l'octroi de crédit ou à une demande d'octroi de crédit,

(iii) à créer ou à tenir, pour elle, des dossiers relatifs à l'octroi de crédit ou à une demande d'octroi de crédit ou relatifs aux cartes ou aux comptes,

(iv) à contrôler le registre des paiements d'une autre personne ou à traiter les paiements faits ou à faire par celle-ci;

r.4) le service, sauf un service visé par règlement, qui est rendu en préparation de la prestation effective ou éventuelle d'un service visé à l'un des alinéas a) à i) et l), ou conjointement avec un tel service, et qui consiste en l'un des services suivants :

(i) un service de collecte, de regroupement ou de communication de renseignements,

(ii) un service d'étude de marché, de conception de produits, d'établissement ou de traitement

assistance, promotional or advertising service or a similar service,

de documents, d'assistance à la clientèle, de publicité ou de promotion ou un service semblable;

(*r.5*) property (other than a financial instrument or prescribed property) that is delivered or made available to a person in conjunction with the rendering by the person of a service referred to in any of paragraphs (a) to (i) and (l),

*r.5*) un bien, sauf un effet financier ou un bien visé par règlement, qui est livré à une personne, ou mis à sa disposition, conjointement avec la prestation par celle-ci d'un service visé à l'un des alinéas a) à i) et l);

(*s*) any service the supply of which is deemed under this Part to be a taxable supply, or

*s*) les services dont la fourniture est réputée taxable aux termes de la présente partie;

(*t*) a prescribed service;

*t*) les services visés par règlement.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**APPEAL FROM THE JUDGMENT OF THE HONOURABLE JUSTICE WOODS DATED  
MAY 18, 2012, NO. 2008-922(GST)G**

**DOCKET:** A-288-12

**STYLE OF CAUSE:** GLOBAL CASH ACCESS (CANADA) INC.  
v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 17, 2013

**REASONS FOR JUDGMENT BY:** SHARLOW J.A.

**CONCURRED IN BY:** (STRATAS, NEAR JJ.A.)

**DATED:** NOVEMBER 19, 2013

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