[OFFICIAL ENGLISH TRANSLATION]

2000-1618(IT)G

BETWEEN:

GASTON CELLARD INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 11, 2001, at New Carlisle, Quebec, by
the Honourable Judge Alain Tardif

Appearances

Counsel for the Appellant:	André Lévesque
Counsel for the Respondent:	Valérie Tardif

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1996 and 1997 taxation years is allowed, and the case is to be reconsidered on the basis that the cost of $15,000 spent to construct the foundations required for the installation of a weigh scale and the actual capital cost to the taxpayer, not the deemed capital gain under paragraph 44(1)(*f*), are the costs to be used for the purposes of calculating the applicable ITC, in accordance with the attached Reasons for Judgment.

Costs are awarded on a Class B basis.

Signed at Ottawa, Canada, this 5th day of July 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 10th day of October 2003.

Sophie Debbané, Revisor

[OFFICIAL ENGLISH TRANSLATION]

Date: 20020705
Docket: 2000-1618(IT)G

BETWEEN:

GASTON CELLARD INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] This appeal concerns the 1996 and 1997 taxation years.

[2] To make and issue the assessments that are the subject of this appeal, the Minister of National Revenue (the "Minister") assumed the following facts:

[TRANSLATION]

(a) During the 1991 taxation year, the appellant operated a sawmill in the county of Bonaventure in the Gaspé region;

(b) On March 11, 1991, the appellant received a notice of expropriation from the ministère des Transports du Québec published in the Bonaventure registry office No. 2, in Carleton, under the number 62255;

(c) The notice of expropriation concerned the land on which the appellant operated its sawmill;

(d) On or about December 16, 1995, the appellant and the ministère des Transports du Québec, entered into an agreement by which the appellant would receive compensation in the amount of $1,150,156.00, which included the following items of compensation:

- land purchase;
- moving buildings, equipment, etc.;
- soil improvement; and
- claim expenses and other damages.

(e) The appellant had a new sawmill built from this compensation, and construction work was completed during the year 1995;

The sawmill building:

(f) In its income tax return for the taxation year ending on December 31, 1995, the appellant availed itself of the provisions of subsection 44(1) of the *Income Tax Act* (the *"Act"*) by making an election that allowed it to defer taxation of the capital gain from the disposition of the land and sawmill building;

(g) The actual capital cost of the new sawmill building is $479,912;

(h) The appellant established the deemed capital cost of the new sawmill building (the "replacement property") at $58,105 pursuant to paragraph 44(1)(*f*) of the *Act*;

(i) However, in calculating its investment tax credit at the end of the 1995 taxation year, the appellant took into account the actual acquisition cost of the new building and not, as it should have done, the deemed capital cost of the replacement property provided for in paragraph 44(1)(*f*) of the *Act*;

(j) The Minister of National Revenue accordingly revised the investment tax credit granted for the construction of the new building to $17,432, as the following chart indicates:

Description of the property:	building – sawmill
Cost claimed	$512,121
Eligible cost	$ 58,105

Ineligible cost	$454,016
ITC claimed for the building – 30%	$153,636
ITC granted for the building – 30%	$17,432

(k) Revising the investment tax credit earned in 1995 for the construction of the building to $17,432 had the effect of reducing the balance of the investment tax credit available for the 1996 and 1997 taxation years in the manner described in paragraph 10 of this Reply to the Notice of Appeal and had a consequence on the amounts of investment tax credit refunded on the tax payable for the years ending on December 31, 1996, and December 31, 1997;

Transportation and construction of a concrete base for a weigh scale:

(l) The Minister of National Revenue took the position that the cost of $20,640 relating to the transportation and construction of a concrete base serving to support a used weigh scale in 1996 was not eligible for the purposes of calculating the investment tax credit;

(m) This ineligibility had the effect of reducing the balance of the investment tax credit available for the 1996 and 1997 taxation years in the manner described in paragraph 10 of this Reply to the Notice of Appeal, affected the refund of the investment tax credit for the year ending on December 31, 1996, and had a consequence on the tax payable for the year ending on December 31, 1997;

[3] The appeal raises two issues: the first is whether the ITC ("investment tax credit") provided for in subsection 127(9) of the *Income Tax Act (*the *"Act"*) must be calculated on the basis of the capital cost of the building or the deemed capital cost in accordance with paragraph 44(1)(*f*) of the *Act.*

[4] The second issue in dispute consists of deciding whether the appellant was entitled to an ITC on the cost of the construction of the concrete foundations required for the installation of a used weigh scale.

[5] In 1991, the appellant's mill was the subject of expropriation proceedings by the government of Quebec. After receiving compensation in 1995, the appellant decided to build its new mill on another site.

[6] The payment of compensation resulting from the expropriation of a building triggers a deemed disposition under the *Act.* Consequently, the expropriated taxpayer can make the election provided for in paragraph 44(1)(*f*) of the *Act*; this

election makes it possible to defer the realizable capital gain resulting from the deemed disposition triggered by the expropriation. The appellant made this election.

[7] To replace the expropriated mill, the appellant built a new mill. Having had to assume all of the construction costs for the new mill, the appellant claimed an ITC on the basis of the actual expenditures required for the construction of the new mill.

[8] The Minister maintains that the basis for the ITC calculations is not the actual capital cost but rather the deemed capital cost under paragraph 44(1)(*f*) of the *Act*. The Minister also refused to allow the claim for an ITC with respect to the cost of the foundations erected for the installation of a used weigh scale.

[9] I shall begin by dealing with the issue concerning the construction cost for the foundations required for the installation of the used weigh scale.

[10] The weigh scale had to be moved and reinstalled on new concrete foundations, on the site of the new mill. The dimensions of the foundations were 70 feet in length by 10 feet in width. The weigh scale had been purchased to measure wood by determining its dimensional weight, on the basis of which the stumpage fees were established; these were new government requirements.

[11] The scale could be moved, provided it was separated from its base, which then became useless, so to speak. The weigh scale was just as useless until it was reinstalled on another foundation. To be operational, it had to be anchored or attached to a concrete foundation.

[12] Once affixed to the new foundations, the installation became permanent and constituted real property in the same manner as the mill buildings.

[13] In order to be operational and accomplish its primary purpose, the weigh scale had two key components: a mechanical part that could be moved and permanent foundations that had no value without the weigh scale.

[14] To characterize the mechanical part when it is separated from its foundations is not appropriate since this was a temporary, uncustomary situation; furthermore, this was property of no interest or use. Once assembled or attached to the foundation, it became operational, capable of doing its job.

[15] Having regard to the quality of its ties and anchors to the base, there is no doubt that it was an immovable. This becomes especially clear in reading the relevant provisions: articles 900 *et seq.* of the *Civil Code of Québec* (the "*Code*").

[16] Articles 900 and 901 of the *Code* read as follows:

> *Article 900.*
>
> > *Land, and any constructions and works of a permanent nature located thereon and forming an integral part thereof, are immovables*
> >
> > *Plants and minerals, as long as they are not separated or extracted from the land, are also immovables. Fruits and other products of the soil may be considered to be movables, however, when they are the object of an act of alienation.*
>
> *Article 901.*
>
> > *Movables incorporated with an immovable that lose their individuality and ensure the utility of the immovable form an integral part of the immovable.*
>
> [italics added]

[17] I do not accept the respondent's contention that the foundation is part of the weigh scale; I believe instead that the nature of the weigh scale must be assessed from the time it can operate or is in a position to accomplish the purpose for which it was purchased, that is, to determine the weight of the wood.

[18] The weigh scale accordingly became an integral part of the foundation from the moment it was attached or annexed to it. The installation of the weigh scale on its new foundations had the effect of making it an immovable.

[19] The foundations required an expenditure of $15,000. This expenditure was of the same nature as the one required for the construction of the mill. Consequently, I find that the expenditure of $15,000 for the construction of the foundations required for the installation of a weigh scale was eligible for the investment tax credit.

[20] As for the first issue in dispute, that is, the determination of the capital cost of the mill for which the ITC was to be claimed, the respondent argues that the deemed capital cost, under paragraph 44(1)(*f*) of the *Act*, should be the basis for calculating the ITC, not the capital cost expended, as the appellant claims.

[21] To justify her interpretation, the respondent says that nothing in the provisions of paragraph 44(1)(*f*) limits or restricts the scope of the application of the deemed capital cost provided for in this section of the *Act*. In other words, the respondent submits that the deemed capital cost, provided for by section 44, applies to the entire *Act*, except in the case of the exceptions for which explicit provision is made; since Parliament did not provide an exception for the facts at the origin of this case, the Minister concludes that the deemed capital cost alone applies in the case at bar.

[22] Similarly, the appellant notes that paragraph 44(1)(*f*) contains no exception or specific restriction with respect to the facts at the origin of its appeal.

[23] Although they are in agreement about the lack of specifics, the parties interpret Parliament's silence very differently. The appellant contends that, by its silence, Parliament merely intended that an ITC be obtained on the actual capital cost, not on the deemed capital cost established under paragraph 44(1)(*f*). The respondent, on the other hand, submits that, if this had been the intention of Parliament, it would have expressed this clearly.

[24] The parties also agree on Parliament's objective that the ITC was introduced to encourage and support the economic development of certain regions in Canada that are disadvantaged because of their remoteness.

[25] Apart from the argument that if Parliament did not provide for anything specifically in subsection 127(11.1) of the *Act* and, therefore, that the ITC applies only to the deemed capital cost under paragraph 44(1)(*f*), the respondent submits that the appellant's investment was not a real investment because it involved the use of the compensation for the expropriation not to construct a new mill in the region but essentially to replace the one that was closed as a result of the expropriation.

[26] This argument is not very convincing since the appellant could have decided not to rebuild or to reinvest in a wholly different sector of economic activity or

even in an entirely different region; the region in question would then have been deprived of the investment.

[27] The decision to rebuild consolidated jobs and required the same expenditures as though a new mill had been built for the first time.

[28] In view of this, the appellant in fact invested the costs required to build its new mill. The region benefited from the investment and jobs were maintained and in fact consolidated as a result of the investment. On this point, the ITC did exactly what it was intended to do in that it undoubtedly contributed to the decision to rebuild. It was most certainly an inducement to reinvesting the compensation for the expropriation.

[29] On the basis of the same legal foundations, the parties submitted valid arguments in support of their respective interpretations. It follows, then, that the provisions in question are not worded with all the clarity and precision one might wish.

[30] An ITC is an inducement and a stimulus. If Parliament had wanted to limit the scope and ambit of the benefit, it would have so provided, explicitly or specifically, in order to avoid any uncertainty and confusion, according to the appellant.

[31] As a general rule, if the terms used in the *Act* are clear, they are to be interpreted according to their plain and ordinary meaning. In the case at bar, the issue is not to interpret the vocabulary of the *Act* but, rather, to determine whether a presumption contained in a provision of the *Act* (paragraph 44(1)(*f*)) applies to another provision (subsection 127(9)) that is unrelated to the first. In other words, it must be determined whether the deemed capital cost, which is less than the actual capital cost of a property, according to 44(1)(*f*), must be taken into account for the purposes of the definition of “investment tax credit” provided for in subsection 127(9) of the *Act*.

[32] The term “capital cost” is not defined in the *Act*. In analysing what constitutes the capital cost of a property, the Federal Court of Appeal defined the term in *The Queen (Appellant) v. Geoffrey Stirling (Respondent)*, [1985] 1 F.C. 342, as follows:

> As we understand it, the word "cost" in those sections means the price that the taxpayer gave up in order to get the asset; it does not include any expense that he may have incurred in order to put himself in a position to pay that price or to keep the property afterwards. [See: *R. v. Canadian Pacific Ltd.*, [1978] 2 F.C. DTC 5383 (C.A.); *Birmingham Corporation v. Barnes*, [1935] A.C. 292 (H.L.); *R. v. Consumers' Gas Company Ltd.*, [1984] 1 F.C. 779; 84 DTC 6058 (C.A.)].

[33] In *Singleton v. Canada*, 2001 S.C.C. 61, the Honourable Mr. Justice LeBel, dissenting, did an excellent job in canvassing the recent history of methods of interpretation. Mr. Justice LeBel expressed himself as follows at paragraphs 59 *et seq.*:

> 4. Statutory Interpretation
>
> (a) *The Words-in-Total-Context Approach*
>
> 59 In *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, this Court articulated a new method of statutory interpretation appropriate to the *Income Tax Act*, dubbed the "words-in-total-context approach" by MacGuigan J.A. in *Harris Steel Group Inc. v. M.N.R.*, 85 D.T.C. 5140 (F.C.A.). In *Stubart*, at p. 578, citing *Construction of Statutes* (2nd ed. 1983), at p. 87, Estey J. endorsed the rule of statutory interpretation from E. A. Driedger that this Court had already adopted for other statutes, *viz.*, that "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".
>
> 60 Since *Stubart*, this Court has taken such an approach in a number of other decisions, such as *The Queen v. Golden*, [1986] 1 S.C.R. 209, at p. 214, *per* Estey J., and *Symes v. Canada*, [1993] 4 S.C.R. 695, at p. 744, *per* Iacobucci J., and at p. 806, *per* L'Heureux-Dubé J. Even cases such as *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, at p. 15 (advocating the teleological approach), and *Friesen v. Canada*, [1995] 3 S.C.R. 103, at para. 10, *per* Major J. (advocating the "plain meaning" approach), still refer to *Stubart* as the foundational modern Canadian case for statutory interpretation.
>
> 61 The words-in-total-context approach steers a middle course between the pure teleological method of Gonthier J. in *Corp. Notre-Dame de Bon-Secours* and Major J.'s focus on the "plain meaning" of the statute in *Friesen*. As Professor Duff points out in his article "Interpreting the *Income Tax Act*" (1999), 47 *Can. Tax J.* 741, at p. 787, "[i]n rejecting the extremes of purposive interpretation on the one hand and the plain meaning rule on the other, the words-in-total-context approach affirms a more 'open-textured' approach to statutory interpretation ...".

62 It is important to keep in mind that McLachlin J.'s second caveat in *Shell Canada* does not require a simplified "plain meaning" rule of statutory interpretation. The words-in-total-context approach ensures that clear statutory language is not overlooked in order to carry out a broad statutory purpose more effectively. It is the approach that should be applied here.

(b) *The Teleological Approach*

63 This Court unanimously endorsed a "teleological approach" to the interpretation of the tax legislation in its 1994 decision *Corp. Notre-Dame de Bon-Secours*. According to Gonthier J.'s view, at p. 18, courts should look first to the legislature's purpose in order to determine legislative intent. Once this intent has been determined, then courts can identify the sorts of presumptions to be applied to a particular section:

> ... it is the teleological interpretation that will be the means of identifying the purpose underlying a specific legislative provision and the Act as a whole; and it is the purpose in question which will dictate in each case whether a strict or a liberal interpretation is appropriate or whether it is the tax department or the taxpayer which will be favoured. [Emphasis added.]

64 This approach, however, cannot be mechanically applied for it may raise the first of Dickson C.J.'s worries concerning statutory interpretation in *Bronfman Trust* (which is the same in substance as McLachlin J.'s first caveat in *Shell Canada*, i.e. losing sight of the fact that an appreciation of the context of legislation is helpful "provided it is consistent with the text ... of the taxation statute" (p. 53). If we begin by considering the purposes of the statute we run the risk of obscuring the meaning of the particular statutory language in our enthusiasm to forward the general statutory purpose. Careful attention must always be taken to give effect to the particular language Parliament chose to use.

(c) *The Plain Meaning Approach*

65 The reaction to the teleological approach emphazises the particular statutory language and is often referred to as the "plain meaning" approach. This Court has not dealt consistently with what, precisely, this approach entails. Some cases, such as Major J.'s majority decision in *Friesen* (at pp. 113-114, citing P. W. Hogg and J. E. Magee, *Principles of Canadian Income Tax Law* (1995), section 22.3(c), "Strict and purposive interpretation", at pp. 453-54) take a hard line, as follows:

> ... "object and purpose" can play only a limited role in the interpretation of a statute that is as precise and detailed as the Income Tax Act. When a provision is couched in specific language that admits of no doubt or ambiguity in its application to the facts, then the provision must be applied regardless of its object and purpose.

66 Other cases, such as Cory J.'s majority decision in *Alberta (Treasury Branches) v. M.N.R.*, [1996] 1 S.C.R. 963, however, have understood the test differently, so much so that it is often difficult to distinguish from the words-in-total-context approach. In that

> case, Cory J. held, at para. 15, that "in order to determine the clear and plain meaning of the statute it is always appropriate to consider the 'scheme of the Act, the object of the Act, and the intention of Parliament'".
>
> 67 Cory J.'s understanding of the "plain meaning" approach in *Alberta (Treasury Branches)* is peculiar but telling. By turning to the total context of the statute in order to determine the "plain meaning" of statutory language, he shows that the meaning of statutory language is at times clear only in a particular context. It is a basic axiom of all textual interpretation that meaning is context-dependent. Some statutory language might appear to be obvious in its meaning independent of context. This is not, however, because context plays no part in interpreting the words used. Rather, it is simply because the context is so predictable that we need not pay it any special attention. Nevertheless, it plays a central role in our understanding of the words used.
>
> 68 If the "plain meaning" approach is to make any sense at all, it surely cannot mean that we are always to ignore context when interpreting statutory language. Rather, it must be understood to say that although context is always important, sweeping considerations of general statutory purpose cannot outweigh the specific statutory language chosen by Parliament. It is an acknowledgement that Parliament's purposes can be complex. Rather than finding a single purpose for the Act as a whole and using it to interpret the clear language of specific provisions, we should use such broad purposes only as a context to help elucidate the meaning of the specific statutory language. Understood in this way, it is not inconsistent with the basic thrust of the words-in-total-context approach.

[34] At paragraph 27, the majority of the Court cited a passage from *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622, paragraph 40, where Madam Justice McLachlin (now Chief Justice of Canada) stated as follows:

> Second, it is well established in this Court's tax jurisprudence that a searching inquiry for either the "economic realities" of a particular transaction or the general object and spirit of the provision at issue can never supplant a court's duty to apply an unambiguous provision of the Act to a taxpayer's transaction. Where the provision at issue is clear and unambiguous, its terms must simply be applied.

[35] The respondent interprets the provisions of the *Act* strictly in stating that, if Parliament had intended to specifically exclude the definition of capital cost in paragraph 44(1)(*f*) for the purposes of calculating the ITC, it would have done so in subsection 127(11.1) of the *Act.* If such an interpretation were to be accepted, one would still need to determine whether subsection 44(1)(*f*) of the *Act* applies to subsection 127(9) or whether its application is restricted to deferring the capital gain under subsection 44(1) of the *Act.*

[36] The respondent submits that nothing in paragraph 44(1)(*f*) or in subsection 44(1) restricts the applicability of paragraph 44(1)(*f*) solely to the purposes of subsection 44(1). However, nothing extends the applicability of paragraph 44(1)(*f*) to the remaining provisions of the *Act.* The respondent adds that Parliament specifies the scope of a definition or term in order to limit its applicability and concludes that paragraph 44(1)(*f*) does not state any such limits or restrictions.

[37] It is important, however, to recall that there are provisions, including subsection 13(7.1), that specify that they apply to the entire *Act*. Subsection 13(7.4) is connected to subsection 13(7.1); this subsection is, therefore, applicable to the entire *Act.*

[38] This example illustrates that it is not because Parliament did not explicitly limit the application of paragraph 44(1)(*f*) that the paragraph applies to the entire *Act*, since there are provisions such as subsection 13(7.1) where Parliament has taken the trouble to specifically extend its application to the entire *Act*.

[39] This approach is not, however, sufficient to reach a conclusion since there are also provisions in the *Act* (such as subsection 44(6)) that limit their own applicability, thereby showing that the application of a provision is not automatically limited to the purposes of the provision itself.

[40] Section 15 of the *Interpretation Act* states:

> 15.(1) Definitions or rules of interpretation in an enactment apply to all the provisions of the enactment, including the provisions that contain those definitions or rules of interpretation.
>
> (2) Where an enactment contains an interpretation section or provision, it shall be read and construed
> (a) as being applicable only if a contrary intention does not appear; and
> (b) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.

[41] Paragraph 44(1)(*f*) is not a definition or interpretative provision. Rather, it is a provision that creates a presumption within a special provision for calculating a capital gain.

[42] A term employed in a provision generally has the same meaning throughout the *Act.* In *Schwartz v. Canada*, [1996] 1 S.C.R. 254, at page 298, Mr. Justice La Forest formulated the principle as follows:

> It is a well-established principle of interpretation that words used by Parliament are deemed to have the same meaning throughout the same statute; ... This, as all principles of interpretation, is not a rule, but a presumption that must give way when circumstances demonstrate that such was not the intention pursued by Parliament.

[43] One thing is certain: it is not clear from reading paragraph 44(1)(*f*) that the capital cost provided for in that paragraph is the one that applies to the entire *Act*. Moreover, it is not obvious that in failing to exclude paragraph 44(1)(*f*) in subsection 127(11.1), Parliament intended that this paragraph be taken into account for the purposes of calculating an ITC. In the circumstances, it seems to me that the context of the legislation must be analysed to determine the intention of Parliament.

[44] Consequently, in order to dispose of the issue, it seems necessary to me to return to the facts and circumstances considered by Parliament.

[45] Subsections 127(5) to (12) of the *Act* were enacted by the *Act to amend the statute law relating to income tax (No. 2)*, S.C. 1974-75-76, c. 71, para. 9(1), assented to on December 2, 1975. The creation of the ITC is provided for in the *Notice of Ways and Means Motion to amend the Income Tax Act*, issued on June 23, 1975, by the Minister of Finance of Canada, the Honourable John N. Turner. The Notice is reproduced in *Canada Income Tax Guide Reports, Special Report number 49, 1975 Budget Message*, published by CCH Canadian Limited, June 24, 1975. This report (*Special Report*) includes the following comment by the Minister of Finance:

> **Minister's Comment.** If our economy is to remain productive and competitive and capable of providing jobs, we must ensure that we have modern capital facilities with which to work. We must guard against any slowdown in investment. I have been pleased that capital investment has continued to expand in present circumstances and I want to do what government can do to ensure that this expansion continues.
>
> ...

> I am therefore proposing to introduce an investment tax credit as a temporary extra incentive for investment in a wide range of new productive facilities. The credit will be 5 per cent of a taxpayer's investment in new buildings, machinery and equipment which are for use in Canada primarily in a manufacturing or processing business, production of petroleum or minerals, logging, farming or fishing....
>
> **Official Supplementary Explanation:** To sustain investment in new productive facilities the budget proposes a 5-per-cent credit against federal income tax for specified investments made between now and July 1, 1977.

[46] The creation of the ITC was announced in the 1975 budget; the purpose of the measure was to create a temporary economic incentive. The ITC was extended in the years following 1977 and is still available. In light of the above comments made by the Minister of Finance, an interpretation to the effect that the deemed capital cost provided for in paragraph 44(1)(*f*) of the *Act*, i.e., the one that, in the case at bar, must be taken into consideration, is neither rational nor reasonable. Parliament wanted to create an economic stimulus to promote development. On the basis of this premise, it would be surprising if the inducement were to be reduced or diluted by means of another provision of the *Act*.

[47] The parties have acknowledged that this was clearly an exceptional measure whose sole purpose was to make a better distribution of the collective wealth possible by allowing some regions in Canada to obtain the investments that are essential and beneficial for their survival and economic development. This uncontested fact leads me to conclude that, if Parliament had wanted to restrict or limit the benefits flowing from the ITC, it would have explicitly and specifically so provided.

[48] To support her argument, the respondent also submitted that the new mill was built from the compensation from an expropriation and that it was not really a new mill, but rather a replacement, a relocation. This argument is no doubt based on the restriction that when calculating the ITC, a grant or financial assistance from a government for the realization of a project is excluded.

[49] Parliament wanted to prevent that an ITC be given for amounts that it had itself given the investor. In the case at bar, the compensation received corresponded to the actual value of the property expropriated. It was in no way a

subsidy or any kind of grant; the appellant received only what was owed to it as a result of the expropriation.

[50] Following the expropriation, the appellant was under no obligation to construct a new mill and had no obligation to continue in business. It could simply have decided to cease operations, in which case another business could have decided to take over, and the respondent could not have raised any of her arguments.

[51] In essence, Parliament's purpose was to encourage investments that would enable the applicable regions to achieve an acceptable level of economic development so that more jobs would become available.

[52] The realization of the appellant's project (relocation of its new mill) is consistent with the motivation and intention of Parliament, which wanted to consolidate and develop the economic structure of the regions to which the ITC applied. On the one hand, the appellant was under no legal obligation to rebuild; on the other hand, it could have chosen to invest in a wholly different sector of economic activity or even in another region.

[53] Moreover, the compensation from the expropriation, strictly speaking, had nothing to do with the economic development of the region. I therefore find that the claim that public funds were involved has no merit.

[54] In the case at bar, there is no need to interpret the terms used in the *Act*, since the formulation is clear; instead, it must be determined whether the deemed capital gain provided for in paragraph 44(1)(*f*) applies to subsection 127(9).

[55] In other words, is the deemed capital gain under 44(1)(*f*), which is obviously less than the actual capital cost, the figure that should be used for the purposes of calculating the ITC under subsection 127(9) of the *Act*?

[56] From reading subsection 127(11.1), I understand that Parliament wanted taxpayers to receive the ITC on the capital cost expended, in other words, on the amount actually invested. This interpretation appears to me to be in keeping and consistent with the overall objectives of Parliament. A legislative measure to encourage investment where the benefits would be considerably reduced as a result of an election authorized by the *Act* or on the basis of the taxpayers' financial

situation would have a perverse effect in that it would essentially be theoretical. I believe it would be no overstatement to say that this would be an absurd situation.

[57] For these reasons, the appeal is allowed and the case will have to be reconsidered on the basis that the costs to be used in calculating the applicable ITC must be the cost of $15,000 expended for the construction of the foundations required to install a weigh scale and the capital cost actually expended, not the deemed capital gain under paragraph 44(1)(*f*).

[58] Costs are awarded on a Class B basis.

Signed at Ottawa, Canada, this 5th day of July 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 10th day of October 2003.

Sophie Debbané, Revisor