

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151126

Docket: A-419-13

Citation: 2015 FCA 266

**CORAM: NOËL C.J.
NEAR J.A.
RENNIE J.A.**

BETWEEN:

ELI HUMBY

First Appellant

and

CENTRAL SPRINGS LTD.

Second Appellant

and

A&E PRECISION FABRICATION AND MACHINE SHOP INC.

Third Appellant

and

HER MAJESTY THE QUEEN

First Respondent

and

**HER MAJESTY THE QUEEN IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, AS
REPRESENTED BY THE OFFICE OF THE
HIGH SHERIFF**

Second Respondent

Heard at St. John's, Newfoundland and Labrador, on October 14, 2015.

Judgment delivered at Ottawa, Ontario, on November 26, 2015.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

NOËL C.J.
RENNIE J.A.

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REASONS FOR JUDGMENT

NEAR J.A.

I. Overview

[1] The appellants appeal a decision of a judge of the Federal Court dated November 8, 2013 in which he dismissed the plaintiffs' action against the Canada Revenue Agency (the CRA) and the Newfoundland and Labrador Office of the High Sheriff (the Sheriff) with costs.

II. Background

[2] This case has a long and somewhat complicated history. Eli Humby, the first appellant, was at the relevant times a director and controlling shareholder of Central Springs Ltd. (Central Springs) and A&E Precision Fabrication and Machine Shop Inc. (A&E), the other two appellants. He was also at the relevant times a director and controlling shareholder of Humby Enterprises Ltd (HEL), which is not a party to this claim. HEL was in the logging business in central and western Newfoundland.

[3] In 2000, HEL's logging contract with A.L. Stuckless and Sons Ltd. (Stuckless) to cut wood was not renewed, which resulted in a 90% reduction in HEL's income. HEL commenced litigation against Stuckless and Corner Brook Pulp and Paper Ltd. (the company to which Stuckless delivered its pulp), which was unsuccessful and concluded in 2003 (*Humby Enterprises Ltd. v. A.L. Stuckless & Sons Ltd.*, 2003 NLCA 20, 225 Nfld. & P.E.I.R. 268).

[4] HEL failed to remit payroll deduction amounts, also known as source deductions, as well as GST, in 2000. In 2001, the CRA issued a Requirement to Pay. HEL asked the Province of Newfoundland and Labrador for forgiveness of taxes and an allocation of wood supply on Crown lands, claiming it was at the brink of financial ruin. HEL's tax debts were certified in the Federal Court and registered with the Judgment Enforcement Registry in late 2002. Humby and HEL sued the Province for breach of a promise to supply wood. This litigation was unsuccessful at trial (*Humby v. Department of Forest Resources*, 2005 NLTD 87, 247 Nfld. & P.E.I.R. 273) and on appeal (*Humby Enterprises Ltd v. Newfoundland and Labrador*, 2008 NLCA 21, 285 Nfld. & P.E.I.R. 76).

[5] Part way through 2002, Central Springs and A&E became the employers for certain HEL employees. In October 2002, CRA tax collector Jerry Peddle found discrepancies in HEL, Central Springs and A&E's source deduction accounts. In June 2003, an agreement was reached with the CRA pursuant to which the three companies were to keep all accounts current, including payroll and HST. In exchange, the CRA would not file further certificates and the outstanding tax debt repayment would wait until the conclusion of Humby and HEL's wood supply litigation with the Province of Newfoundland and Labrador. Despite the agreement, the companies' accounts were not kept current.

[6] In July 2003, a trust audit examination by Mr. Peddle resulted in assessments against A&E and Central Springs for failure to remit source deduction, interest, and penalties in respect of the tax years 2001, 2002 and 2003.

[7] In June 2004, a meeting took place at which Humby was advised of the amounts owed by Central Springs and A&E and the requirement to make a lump sum payment, failing which the amounts would be certified. Humby denied before the Federal Court that this meeting took place, but the Federal Court judge found otherwise. No payment was made, and the CRA certified and registered the debts of Central Springs and A&E in August and December of 2004.

[8] In January 2005, the CRA initiated enforcement actions on two of the appellants' properties: one in Gander, and one in Benton. Mr. Peddle instructed the Office of the High Sheriff of Newfoundland and Labrador to begin enforcement against the assets of HEL, Central Springs and A&E by seizing and selling their equipment and inventory.

[9] On February 2, 2005, Humby's legal counsel wrote to the Sheriff to obtain release from the seizure at the Benton property because it was not owned by any of the judgment debtors. The CRA's instructions to sell land and buildings at Benton were withdrawn.

[10] In April 2005, the appellants filed proceedings in the Supreme Court of Newfoundland and Labrador challenging the executions. The proceedings were adjourned.

[11] On August 29, 2005, Humby signed a Release and Discharge on behalf of himself, HEL, Central Springs and A&E in exchange for the return of chattels located on the Benton property.

[12] Also in August 2005, Central Springs and A&E filed Notices of Objection with the Minister of National Revenue (the Minister) in respect of the source deduction assessments for

2001, 2002 and 2003. The CRA took the position that the objection was filed out of time, but on September 26, 2006, Justice Bowie ruled that the CRA had not proven that the Notices of Assessment were sent and received and therefore the time for filing had not expired (*Central Springs Ltd v. Canada*, 2006 TCC 524, [2006] T.C.J. No. 414 (QL) (*Central Springs #1*)).

[13] On March 13, 2006, the CRA instructed the Sheriff to sell the seized personal property from the Gander property. On June 28, 2006, Central Springs and A&E's seized assets were sold by bids. Assets which did not fetch 75% or more of their appraised value were not sold. According to the Office of the High Sheriff, a group of items appraised at \$53,000.00 was sold for \$60,000.00, and another group of items appraised at \$134,001.90 received bids totalling \$13,055.00 and was not sold. On October 22, 2007, Justice Heneghan of the Federal Court dismissed a motion by the CRA to sell the remaining property (*Canada (Minister of National Revenue – MNR) v. Humby Enterprises Ltd.*, 2007 FC 1085, 324 F.T.R. 11). The unsold items were returned to the appellants at the end of October or beginning of November 2007.

[14] In a judgment dated October 22, 2010, Justice Boyle of the Tax Court of Canada ordered that the assessments against Central Springs and A&E be vacated for the 2001, 2002 and 2003 taxation years (*Central Springs Ltd v. Canada*, Reasons for Judgment, 2010 TCC 543, 197 A.C.W.S. (3d) 1050 (*Central Springs #2*)). Justice Boyle later acknowledged that he had made an inadvertent error in ordering that the assessments be vacated as the reasons that he gave did not support this result (*Central Springs #2*, Reasons for Amended Judgment at para. 7). In his amended judgment dated December 13, 2010, he corrected his earlier judgment and ordered that the Minister reconsider and reassess the taxpayers in accordance with the reasons of his October

22, 2010 judgment. Justice Boyle's October 22, 2010 reasons plainly acknowledge that "[p]art way through 2002, A & E and Central Springs became the employers of those workers who were needed for their businesses" (Reasons for Judgment at para. 7). However, he disagreed with the Minister's determination that "A & E and Central Springs should have been regarded as the employers of these transferred employees even before the 2002 corporate payroll organization" (Reasons for Judgment at para. 8). He held that the Minister's assessments should be vacated for 2001 and for the portion of 2002 prior to the reorganization, and that the Minister's assessments for the latter portion of 2002 and for 2003 were valid.

[15] A&E was dissolved on August 26, 2008, and Central Springs was dissolved on September 24, 2009. The appellants' Statement of Claim in this proceeding was filed on August 17, 2009.

[16] The plaintiffs' arguments before the Federal Court related to the 2002-2003 assessments and the seizure and sale of assets on the Gander and Benton properties. The Federal Court judge thoroughly canvassed the numerous arguments made by the plaintiffs, and ultimately rejected them all. While he was sympathetic to the difficulties encountered by Mr. Humby, he concluded that "at the end of the day the Plaintiffs cannot avoid the fact that they owed tax moneys, that they failed to pay the amounts due and therefore the CRA was entitled to seize and sell assets to satisfy the amounts due" and that the "High Sheriff's Office carried out its duties as required by law" (Federal Court at para. 180).

III. Positions of the Parties

A. *Appellants*

[17] The appellants argue that Justice Boyle's amended judgment of December 13, 2010 (*Central Springs #2*, Reasons for Amended Judgment) did not confirm the validity of the assessments for any part of 2001, 2002 and 2003. The appellants argue that Justice Boyle simply gave the CRA the opportunity to reconsider the assessments made for these taxation years. The appellants submit that the Federal Court judge reversed Justice Boyle's decision in this regard and rejected the Federal Court judge's conclusion that Justice Boyle's judgment provided a basis upon which to find the respondents' actions were lawful.

[18] The appellants also argue that the CRA is not permitted to take enforcement action until the appeal period following a Notice of Assessment expires. They submit that pursuant to the September 26, 2006 order of Justice Bowie in *Central Springs #1*, the appellants' time to file a Notice of Objection did not expire until September 2005, yet the CRA initiated enforcement action in January 2005.

[19] The appellants argue that the respondents' actions were also excessive. The appellants assert that the assets seized were of a value far in excess of any amounts that may have been outstanding. In addition, the appellants state that some of the equipment sold was not properly appraised. Further, that the costs associated with the seizure of the appellants' assets were greatly increased by requiring unnecessary security on the property and by moving some these assets from one site to another.

[20] The appellants argue that as a result of these unlawful and excessive enforcement actions, punitive and exemplary damages should be awarded and the Federal Court judge erred in finding that such damages should not be awarded to them.

B. *Respondent 1—Canada Revenue Agency*

[21] The CRA argues that the Federal Court judge correctly held that the CRA's actions were lawful and collection was authorized and carried out in accordance with the law. It submits that notwithstanding the fact that the appellants did not receive the appealed assessments, these assessments were valid and binding and existed at the time certificates were registered in the Judgment Enforcement Registry. It argues that the collection actions carried out by the CRA were authorized by section 223 and paragraphs 225.1(6)(b), (d) and (e) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the *ITA*), and by subsection 163(3) of the *Excise Tax Act*, R.S.C. 1985, c. E-15. The CRA submits that the appellants have not identified any error of law made by the Federal Court judge with respect to the lawfulness of the CRA's actions, and that he correctly pointed out that he had no jurisdiction to review the validity of the assessments.

[22] The CRA also argues that the Federal Court judge did not ignore evidence or draw erroneous conclusions from the evidence, as alleged by the appellants. It submits that the Federal Court judge did not commit a palpable and overriding error when he found on the evidence before him that the actions of the CRA were reasonable in all the circumstances. It argues that the Federal Court judge considered all of the evidence before him, and that the appellant is asking this Court to reweigh evidence and second guess the weight assigned to particular items of evidence, which is not the function of an appellate court.

[23] The CRA argues that Humby failed to establish that any damages he suffered were caused by the actions of the CRA, and that the appellants put no evidence before the Federal Court judge which could have formed the legal basis for an award of damages.

C. *Respondent 2—Office of the High Sheriff*

[24] The Sheriff argues that it undertook its enforcement proceedings in good faith and in a commercially reasonable manner, as required pursuant to paragraph 3(5)(f) of the *Judgment Enforcement Act*, S.N.L. 1996, Ch. J-1.1.

IV. Issues

[25] I have distilled the various issues raised as follows:

1. Were the CRA's assessments of the appellants valid and lawful?
2. Did the CRA act in an improper and unlawful manner?
3. Did the Office of the High Sheriff act in good faith and in a commercially reasonable manner?
4. Are the claims made by A&E a nullity?
5. Are the claims barred by the *Limitations Act*, S.N.L. 1995, Ch. L-16.1?
6. Are the appellants entitled to damages?

V. Standard of Review

[26] The standard of review on this appeal is governed by *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. Pursuant to that decision, questions of law and legal principles

extricable from questions of mixed fact and law are reviewed on a correctness standard, and questions of fact and mixed fact and law are reviewed on a standard of palpable or overriding error.

VI. Analysis

[27] The arguments made by the appellants before this Court are virtually identical to those put before the Federal Court. The appellants essentially ask that this Court re-weigh the evidence and reach a different conclusion. This is not the role of an appellate court. Rather, the appellants must show that the Federal Court judge erred on a question of law or made a palpable and overriding error with respect to the judge's assessment of the evidence before him or the application of the law to the evidence before him in this case.

(1) Were the CRA's assessments of the appellants valid and lawful?

[28] The foundation of the appellants' argument is that the Federal Court judge erred in finding that the CRA's assessments were valid and lawful. The evidence clearly shows that as a result of a trust audit conducted in July 2003, which indicated that A&E and Central Springs had failed to remit source deductions, the CRA issued assessments for taxation years 2001, 2002 and 2003. Further, that as a result of the appellants' failure to pay these amounts, the CRA certified the debts of the corporate appellants in August 2004 and December 2004 (Federal Court at para. 28).

[29] These are the assessments which Justice Bowie of the Tax Court of Canada determined had not been delivered to the taxpayers in *Central Springs #1*. He allowed the appellants to proceed with their Notice of Objection with the result that the amounts owing by reason of the underlying assessments could not be subjected to immediate collection actions by reason of section 225.1(1) of the *ITA*. However, Justice Bowie's Order is of no assistance to the appellants in this matter, as the certified amounts for the period prior to the one contemplated by the Notice of Objection remained outstanding.

[30] Further, as noted by the Federal Court judge, the outstanding certified amounts related to source deductions and as such were not subject to the collection restrictions contained in subsection 225.1(1) of the *ITA*. As stated by the Federal Court judge at paragraph 56:

Subsection 225.1(1) of the *ITA* provides that, with certain exceptions, the Minister shall not take any of the listed collection actions against a taxpayer until after the day that is 90 days after the day that a Notice of Assessment (or Reassessment) is mailed to the taxpayer, or if the taxpayer files a notice of objection or an appeal of the assessment, until the objection or appeal has been dealt with finally.

[31] Outstanding amounts owing related to source deductions are captured by one of the relevant exceptions. These amounts are subject to immediate collection action, as clearly set out in paragraph 225.1(6)(b). Again, per the Federal Court at paragraph 59:

As a result of paragraph 225.1(6)(b) of the *ITA*, source deductions (payroll amounts) which are required to be deducted or withheld and remitted pursuant to subsection 153(1) and Regulation 101 of the *ITA*, are not subject to the collections restrictions imposed by subsection 225.1(1) of the *ITA*. In addition, penalties and interest payable as a result of the failure to remit an amount referred to in paragraph 225.1(6)(b) are also not the subject of collections restrictions.

The Federal Court judge properly concluded (at para. 63) that

[t]he net effect of these provisions is that in respect of the employees' deduction from payroll of the amount for withholding and remission to CRA, CRA can take collection action immediately and does not have to wait the 90-day period otherwise generally preventing CRA enforcement action.

[32] In addition, the appellants argue that the decision of Justice Boyle in *Central Springs #2* invalidated all prior assessments made by the CRA with respect to the appellants. However, the Federal Court judge correctly noted at paragraph 51 of his reasons that the assessments as they relate to part of 2002 and 2003 in respect of source deductions were valid and confirmed in Justice Boyle's amended decision of December 13, 2010. The appellants did not appeal the judgment of Justice Boyle and the Federal Court judge concluded that he had no jurisdiction to review the validity of the tax assessments. I agree.

[33] In my view, the Federal Court judge properly concluded that there existed outstanding certified amounts owed by the appellants and that the CRA was lawfully entitled to undertake enforcement action.

(2) Did the CRA act in an improper and unlawful manner?

[34] It remains to be determined if the CRA acted in an improper or unlawful manner with respect to its collection efforts. The Federal Court judge considered the evidence of the appellants to the effect that Mr. Peddle, the CRA auditor, acted to "bring Humby down" (Federal Court at para. 94). The judge concluded after considering the enforcement actions as a whole that they were reasonable and conducted for no other purpose than the collection of the outstanding debts (Federal Court at para. 107). I see no reason to disturb this finding.

- (3) Did the Office of the High Sheriff act in good faith and in a commercially reasonable manner?

[35] Similarly, with respect to the Office of the High Sherriff, the Federal Court judge found that the Sherriff had acted in good faith and in a commercially reasonable manner. Just as I have found no reviewable error with regard to the CRA's actions, including as they relate to its instructions to the Sheriff, I also find no error in the Federal Court judge's finding that there is no basis for liability on the part of the Sheriff, on the grounds that the Sheriff followed the CRA's instructions (Federal Court at para. 137). The appellants also argue that the Sheriff was "excessive" in the manner in which it carried out the seizure and sale of their property. The appellants raised these arguments before the Federal Court judge, who dealt with, and dismissed them, in turn. I can see no reason to disturb the Federal Court judge's findings in this regard.

- (4) Are A&E's claims a nullity?

[36] The Federal Court judge held that because A&E was dissolved pursuant to the Newfoundland *Corporations Act*, R.S.N.L. 1990, C. C-36 prior to the Statement of Claim being filed, A&E's claims are a nullity. He relied on *Investments Ltd v. National Bank of Greece (Canada)*, 37 B.L.R. (2d) 324, [1997] O.J. No. 4997 (QL) (Ct. J.) in so holding. The Federal Court judge made no reviewable error in this regard.

- (5) Are the claims barred by the Limitations Act?

[37] The Federal Court judge properly held that many of the appellants' claims are statute-barred pursuant to sections 5(a), (c), (d), and (g) of the Newfoundland and Labrador *Limitations Act*. I see no reason to disturb the Federal Court judge's findings in this regard.

(6) Are the appellants entitled to damages?

[38] Because the appellants have failed to demonstrate that the respondents were at fault, it follows that they are not entitled to damages.

VII. Disposition

[39] I would dismiss the appeal with costs.

"David G. Near"

J.A.

"I agree.

Marc Noël Chief Justice"

"I agree.

Donald J. Rennie J.A."

APPENDIX: Relevant Legislative Provisions

A. Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Section 152—Assessment**Liability not dependent on assessment**

(3) Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

...

Assessment deemed valid and binding

(8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

Responsabilité indépendante de l'avis

(3) Le fait qu'une cotisation est inexacte ou incomplète ou qu'aucune cotisation n'a été faite n'a pas d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par la présente partie.

[...]

Présomption de validité de la cotisation

(8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

Section 153—Withholding

153. (1) Every person paying at any time in a taxation year

(a) salary, wages or other remuneration, other than amounts described in subsection 115(2.3) or 212(5.1),

...

shall deduct or withhold from the

153. (1) Toute personne qui verse au cours d'une année d'imposition l'un des montants suivants :

a) un traitement, un salaire ou autre rémunération, à l'exception des sommes visées aux paragraphes 115(2.3) ou 212(5.1);

[...]

doit en déduire ou en retenir la somme

payment the amount determined in accordance with prescribed rules and shall, at the prescribed time, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a designated financial institution.

fixée selon les modalités réglementaires et doit, au moment fixé par règlement, remettre cette somme au receveur général au titre de l'impôt du bénéficiaire ou du dépositaire pour l'année en vertu de la présente partie ou de la partie XI.3. Toutefois, lorsque la personne est visée par règlement à ce moment, la somme est versée au compte du receveur général dans une institution financière désignée.

Section 225.1—Collection restrictions

225.1 (1) If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:

225.1 (1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions de la présente loi, exception faite des paragraphes 152(4.2), 169(3) et 220(3.1), le ministre, pour recouvrer le montant impayé, ne peut, avant le lendemain du jour du début du recouvrement du montant, prendre les mesures suivantes :

(a) commence legal proceedings in a court,

a) entamer une poursuite devant un tribunal;

(b) certify the amount under section 223,

b) attester le montant, conformément à l'article 223;

(c) require a person to make a payment under subsection 224(1),

c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);

(d) require an institution or a person to make a payment under subsection 224(1.1),

d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;

(e) [Repealed, 2006, c. 4, s. 166]

e) [Abrogé, 2006, ch. 4, art. 166]

(f) require a person to turn over moneys under subsection 224.3(1), or

f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);

(g) give a notice, issue a certificate or make a direction under subsection 225(1).

g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

(1.1) The collection-commencement day in respect of an amount is

(1.1) Le jour du début du recouvrement d'un montant correspond :

(a) in the case of an amount assessed under subsection 188(1.1) in respect of a notice of intention to revoke given under subsection 168(1) or any of subsections 149.1(2) to (4.1), one year after the day on which the notice was mailed;

a) dans le cas du montant d'une cotisation établie en vertu du paragraphe 188(1.1) relativement à un avis d'intention de révoquer l'enregistrement délivré en vertu du paragraphe 168(1) ou l'un des paragraphes 149.1(2) à (4.1), un an après la date de mise à la poste de l'avis d'intention;

(b) in the case of an amount assessed under section 188.1, one year after the day on which the notice of assessment was sent; and

b) dans le cas du montant d'une cotisation établie en vertu de l'article 188.1, un an après la date d'envoi de l'avis de cotisation;

(c) in any other case, 90 days after the day on which the notice of assessment was sent.

c) dans les autres cas, 90 jours suivant la date d'envoi de l'avis de cotisation.

(2) If a taxpayer has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g) until after the day that is 90 days after the day on which notice is sent to the taxpayer that the Minister has confirmed or varied the assessment.

(2) Dans le cas où un contribuable signifie en vertu de la présente loi un avis d'opposition à une cotisation pour un montant payable en vertu de cette loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées aux alinéas (1)a) à g) avant le quatre-vingt-onzième jour suivant la date d'envoi d'un avis au contribuable où il confirme ou modifie la cotisation.

(3) Where a taxpayer has appealed from an assessment of an amount payable under this Act to the Tax Court of Canada, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) before the

(3) Dans le cas où un contribuable en appelle d'une cotisation pour un montant payable en vertu de la présente loi, auprès de la Cour canadienne de l'impôt, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées aux alinéas (1)a) à g) avant la

day of mailing of a copy of the decision of the Court to the taxpayer or the day on which the taxpayer discontinues the appeal, whichever is the earlier.

(4) Where a taxpayer has agreed under subsection 173(1) that a question should be determined by the Tax Court of Canada, or where a taxpayer is served with a copy of an application made under subsection 174(1) to that Court for the determination of a question, the Minister shall not take any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) for the purpose of collecting that part of an amount assessed, the liability for payment of which will be affected by the determination of the question, before the day on which the question is determined by the Court.

(5) Notwithstanding any other provision in this section, where a taxpayer has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of the taxpayer, the Minister may take any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) for the purpose of collecting the amount assessed, or a part thereof, determined in a manner consistent with the decision or judgment of the Court in

date de mise à la poste au contribuable d'une copie de la décision de la cour ou la date où le contribuable se désiste de l'appel si celle-ci est antérieure.

(4) Dans le cas où un contribuable convient de faire statuer conformément au paragraphe 173(1) la Cour canadienne de l'impôt sur une question ou qu'il est signifié au contribuable copie d'une demande présentée conformément au paragraphe 174(1) devant la Cour canadienne de l'impôt pour qu'elle statue sur une question, le ministre, pour recouvrer la partie du montant d'une cotisation, dont le contribuable pourrait être redevable selon ce que la cour statuera, ne peut prendre aucune des mesures visées aux alinéas (1)a) à g) avant la date où la cour statue sur la question.

(5) Malgré les autres dispositions du présent article, lorsqu'un contribuable signifie, conformément à la présente loi, un avis d'opposition à une cotisation ou en appelle d'une cotisation devant la Cour canadienne de l'impôt et qu'il convient par écrit avec le ministre de retarder la procédure d'opposition ou la procédure d'appel jusqu'à ce que la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada rende jugement dans une autre action qui soulève la même question, ou essentiellement la même, que celle soulevée dans l'opposition ou l'appel par le contribuable, le ministre peut prendre les mesures visées aux alinéas (1)a) à g) pour recouvrer tout ou partie du montant de la cotisation établi de la façon envisagée par le jugement rendu dans cette autre action, à tout moment après

the other action at any time after the Minister notifies the taxpayer in writing that

(a) the decision of the Tax Court of Canada in that action has been mailed to the Minister,

(b) judgment has been pronounced by the Federal Court of Appeal in that action, or

(c) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

(6) Subsections 225.1(1) to 225.1(4) do not apply with respect to

(a) an amount payable under Part VIII;

(b) an amount required to be deducted or withheld, and required to be remitted or paid, under this Act or the Regulations;

(c) an amount of tax required to be paid under section 116 or a regulation made under subsection 215(4) but not so paid;

(d) the amount of any penalty payable for failure to remit or pay an amount referred to in paragraph 225.1(6)(b) or 225.1(6)(c) as and when required by this Act or a regulation made under this Act; and

(e) any interest payable under a provision of this Act on an amount referred to in this paragraph or any of paragraphs 225.1(6)(a) to 225.1(6)(d).

que le ministre a avisé le contribuable par écrit que, selon le cas :

a) le jugement de la Cour canadienne de l'impôt dans l'action a été posté au ministre;

b) la Cour d'appel fédérale a rendu jugement dans l'action;

c) la Cour suprême du Canada a rendu jugement dans l'action.

(6) Les paragraphes (1) à (4) ne s'appliquent pas :

a) aux montants payables en application de la partie VIII;

b) aux montants à déduire ou à retenir, et à remettre ou à payer, en application de la présente loi ou de son règlement;

c) à l'impôt à payer en application de l'article 116 ou d'un règlement d'application du paragraphe 215(4) et qui n'a pas encore été payé;

d) aux pénalités payables pour défaut de remettre ou de payer un montant visé à l'alinéa b) ou c) de la manière et dans le délai prévus à la présente loi ou à son règlement;

e) aux intérêts payables en application de la présente loi sur l'un des montants visés au présent alinéa ou aux alinéas a) à d).

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

Section 315—Assessment before collection

315. (1) The Minister may not take any collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under this Part, other than interest, unless the amount has been assessed.

(2) If the Minister sends a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General.

(3) The Minister may, subject to such terms and conditions as the Minister may stipulate, postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the Minister and the person.

315. (1) Le ministre ne peut, outre exiger des intérêts, prendre des mesures de recouvrement aux termes des articles 316 à 321 relativement à un montant susceptible de cotisation selon la présente partie que si le montant a fait l'objet d'une cotisation.

(2) La partie impayée d'une cotisation visée par un avis de cotisation est payable immédiatement au receveur général.

(3) Sous réserve des modalités qu'il fixe, le ministre peut reporter les mesures de recouvrement concernant tout ou partie du montant d'une cotisation qui fait l'objet d'un litige.

C. Newfoundland and Labrador *Judgment Enforcement Act*, S.N.L. 1996, Ch. J-1.1

Section 3—Application

(5) The following applies to enforcement proceedings:

...

(f) all rights, duties and functions of creditors and the sheriff under this Act shall be exercised or discharged in good faith and in a commercially reasonable manner;

D. Newfoundland and Labrador *Limitations Act*, S.N.L. 1995, Ch. L-16.1

Section 5—Limitation periods 2 years

5. Following the expiration of 2 years after the date on which the right to do so arose, a person shall not bring an action

(a) for damages in respect of injury to a person or property, including economic loss arising from the injury whether based on contract, tort or statutory duty;

(b) for damages in respect of injury to person or property including economic loss arising from negligent representation and professional negligence whether based on contract, tort or statutory duty;

(c) for trespass to property not included in paragraph (a);

(d) for defamation other than defamation referred to in section 17 of the *Defamation Act*;

(e) for false imprisonment;

(f) for malicious prosecution;

(g) for conspiracy to commit a wrong referred to in paragraphs (a) to (e);

(h) which is a civil action, to recover a fine or other penalty and to recover a fine or penalty imposed by a court or law;

(i) under the *Fatal Accidents Act*; or

(j) under the *Privacy Act*.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

AN APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE PHELAN OF THE FEDERAL COURT DATED NOVEMBER 8, 2013, NO. T-1363-09.

DOCKET: A-419-13

STYLE OF CAUSE: ELI HUMBY AND CENTRAL SPRINGS LTD. AND A&E PRECISION FABRICATION AND MACHINE SHOP INC. v. HER MAJESTY THE QUEEN AND HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR, AS REPRESENTED BY THE OFFICE OF THE HIGH SHERIFF

PLACE OF HEARING: ST. JOHN'S, NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: OCTOBER 14, 2015

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: NOËL C.J.
RENNIE J.A.

DATED: NOVEMBER 26, 2015

APPEARANCES:

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FOR THE RESPONDENT
HER MAJESTY THE QUEEN

FOR THE RESPONDENT
HER MAJESTY THE QUEEN IN
RIGHT OF NEWFOUNDLAND
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REPRESENTED BY THE OFFICE
OF THE HIGH SHERIFF