

Date: 20091110

Docket: A-80-09

Citation: 2009 FCA 324

**CORAM: NADON J.A.
EVANS J.A.
PELLETIER J.A.**

BETWEEN:

TORONTO DISTRICT SCHOOL BOARD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on November 10, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on November 10, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on November 10, 2009)

EVANS J.A.

[1] This is an appeal by the Toronto District School Board from a decision by the Tax Court of Canada in which Justice Campbell Miller dismissed the Board's appeal from the disallowance of its claim for a rebate of the Goods and Services Tax ("GST") that it had paid from August 2002 to

February 2004. The decision is reported as *Toronto District School Board v. Her Majesty the Queen*, 2009 TCC 39.

[2] During this period, the Board was subject to a vesting order made under Division D of Part IX of the *Education Act*, R.S.O. 1990, c. E-2, and thus subject to the control of the Minister of Education, because it had not discharged its statutory duty of producing a balanced budget for the year 2002. The Minister appointed a Supervisor to take over and control the exercise by the Board of its responsibilities.

[3] The Board had argued that, while subject to the vesting order, it was an agent of the Crown because the conduct of its affairs was under the comprehensive control of the Minister of Education, acting through the Supervisor. Consequently, it said, it was entitled to the Province's immunity from taxation under section 125 of the *Constitution Act, 1867*.

[4] We are all of the view that the Judge committed no reversible error in dismissing the Board's appeal. However we would base the decision on the ground that the Board was at no time acting as a common law or statutory agent of the Crown.

[5] The exercise by the Minister of temporary *de jure* control over the Board's affairs following its failure to produce a balanced budget as required by the *Education Act* does not in the circumstances constitute the Board an agent of the Crown. At all times, the Board was discharging its statutory mandate to provide education services to local residents, subject to its duty to produce a

balanced budget. The mandate of the Supervisor, on the other hand, was simply to ensure that the Board discharged its statutory duty with respect to the budget.

[6] That the Board was not the agent of the Crown during the period that the Supervisor was conducting its affairs is made clear by section 257.43 of the *Education Act*. This provides that, while a school board is subject to a vesting order, all things done by or on behalf of the Minister in relation to the affairs of the Board shall for all purposes be deemed to have been done by and for the Board and in its name. This must include the purchase by the Board of the goods and services on which it had paid GST, even though purchases made for the use of the Board were at that time subject to the control of the Supervisor.

[7] For these reasons, and despite the able arguments of counsel, the appeal will be dismissed with costs.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-80-09

(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA BEFORE JUSTICE CAMPBELL J. MILLER DATED JANUARY 20, 2009, DOCKET NO. 2006-1432 (GST) G).

STYLE OF CAUSE: TORONTO DISTRICT SCHOOL BOARD v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 10, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, EVANS & PELLETIER JJ.A)

DELIVERED FROM THE BENCH BY: EVANS J.A.

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