Federal Court of Appeal

Cour d'appel fédérale

Date: 20160908

Dockets: A-325-15
A-326-15

Citation: 2016 FCA 223

CORAM: **NADON J.A.**
DAWSON J.A.
WEBB J.A.

Docket: A-325-15

BETWEEN:

CHIEF JOHN ERMINESKIN, LAWRENCE WILDCAT, GORDON LEE, ART LITTLECHILD, MAURICE WOLFE, CURTIS ERMINESKIN, GERRY ERMINESKIN, EARL ERMINESKIN, RICK WOLFE, KEN CUTARM, BRIAN LEE, LESTER FRAYNN, THE ELECTED CHIEF AND COUNCILORS OF THE ERMINESKIN INDIAN BAND AND NATION SUING ON BEHALF OF ALL THE OTHER MEMBERS OF THE ERMINESKIN INDIAN BAND AND NATION

Appellants

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, AND THE MINISTER OF FINANCE

Respondents

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: A-326-15

AND BETWEEN:

CHIEF VICTOR BUFFALO ACTING ON HIS OWN BEHALF AND ON BEHALF OF ALL THE OTHER MEMBERS OF THE SAMSON INDIAN NATION AND BAND, AND THE SAMSON INDIAN BAND AND NATION

Appellants

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, AND THE MINISTER OF FINANCE

Respondents

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Heard at Vancouver, British Columbia, on June 14 and 15, 2016.

Judgment delivered at Ottawa, Ontario, on September 8, 2016.

REASONS FOR JUDGMENT BY:	DAWSON J.A.
CONCURRED IN BY:	NADON J.A.
DISSENTING REASONS BY:	WEBB J.A.

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REASONS FOR JUDGMENT

<u>DAWSON J.A.</u>

[1] Ermineskin Cree Nation and Samson Cree Nation are Indian Bands within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5. Each adhered to Treaty No. 6, a Treaty made between the Crown and the Cree of central Alberta. In 1896, the Pigeon Lake Indian Reserve No. 138A was set aside for the use of the Indians of the Hobbema Agency, including Ermineskin and Samson (together, the appellants).

[2] In 1946, the appellants surrendered their mineral interests in the Pigeon Lake Reserve to the Crown. This surrender permitted the Crown to grant leases to oil and gas companies which allowed these companies to explore and to extract oil and gas from the Reserve lands and to sell the oil and gas commercially. In exchange for such leases, a royalty interest was paid by the companies to the Crown in trust for the appellants.

[3] In 1989, Samson initiated a complex action against Canada in the Federal Court asserting a number of claims arising out of their ongoing relationship. Ermineskin commenced a similar action in 1992.

[4] Due to the complexity of the litigation, the parties agreed that the trial would proceed in phased stages. In 2002, the Federal Court issued an order setting out the planned staging of four phases of the litigation that would proceed after the first two phases were heard. Only one of these phases is directly relevant to this appeal: the phase which the plaintiffs referred to as the

"Tax Claim" and which the defendants referred to as the "Regulated Price Regime". Like the Federal Court, in these reasons I refer to this issue as the "Regulated Price Regime" issue.

[5] Briefly stated, this issue relates to a national strategy developed to deal with the effects of rapidly rising international oil prices in late 1973 and early 1974 resulting from an oil embargo implemented by members of the Organization of Arab Petroleum Exporting Countries. The national strategy included a decision by the federal government to implement a price freeze on oil sold domestically and to implement a tax, later a charge, upon export sales of oil.

[6] While initially the price freeze on oil sold domestically was one voluntarily agreed to by the oil companies, ultimately the ability of the government to regulate the price of oil sold domestically was legislated in the *Petroleum Administration Act*, S.C. 1974-75-76, c. 47.

[7] The tax and later the charge were imposed, respectively, pursuant to the *Oil Export Tax Act*, S.C. 1973-74, c. 53 and the *Petroleum Administration Act*. The tax or charge equaled the difference between Canada's domestic price and the export price of oil. Monies received by Canada on account of the tax or charge were used to subsidize consumers in Eastern Canada who would otherwise have had to pay the full world price on imported oil. Like the Federal Court, in these reasons I will refer to the oil price program constituted by the *Oil Export Tax Act* and the *Petroleum Administration Act* as the "Program".

[8] The Regulated Price Regime issue never proceeded to trial. Ultimately, Canada moved for summary judgment dismissing the plaintiffs' claims related to the Regulated Price Regime issue.

[9] For thorough and thoughtful reasons contained in 270 paragraphs cited as 2015 FC 836, a judge of the Federal Court dismissed these claims on the ground they were barred by application of the relevant statute of limitations.

[10] These are appeals from the judgment of the Federal Court. By order dated October 15, 2015 the appeals were consolidated, with Court file A-325-15 being the lead file. In accordance with the consolidation order, a copy of these reasons shall be filed in Court file A-326-15.

The Issues

[11] On these appeals, the appellants re-assert a number of issues argued, and lost, in the Federal Court.

[12] Ermineskin raises three arguments. First, it argues that the Federal Court erred in determining that the issues before it were suitable for determination by way of summary judgment. It argues that Canada's motion raised a novel question of law or mixed fact and law concerning the constitutional applicability of limitations statutes to its claims because its claims are based on an asserted breach of treaty rights.

[13] Next, Ermineskin argues that the Federal Court erred in determining that section 39 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 and paragraph 4(1)(*e*) of the Alberta *Limitation of Actions Act*, R.S.A. 1980, c. L-15, are constitutionally applicable and operable with respect to its claims. Subsection 39(1) of the *Federal Courts Act* provides that, in the absence of an express provision in any other Act, the laws relating to the limitations of actions in force in a province between subject and subject apply to proceedings in the Federal Court in respect of any cause of action arising in that province. Paragraph 4(1)(*e*) of the Alberta *Limitation of Actions Act* prescribes a limitation period of six years from the discovery of the cause of action in respect of actions "grounded on accident, mistake or other equitable ground of relief not hereinbefore specifically dealt with".

[14] Finally, Ermineskin argues that the Federal Court erred by finding that Canada was not acting as an express trustee of Ermineskin's oil and gas revenues for the purposes of the Alberta *Limitation of Actions Act*, and by failing to apply sections 40 and 41 of the Alberta *Limitation of Actions Act* and section 14 of the Alberta *Judicature Act*, R.S.A. 1980, c. J-1.

[15] Samson also advances these arguments. To them, it adds three additional issues. First, Samson argues that the Federal Court erred by summarily dismissing a portion of its claim when there is a risk that a finding with respect to limitation periods made with respect to the Regulated Price Regime issue will impact upon later phases of the trial.

[16] Next, Samson argues that the Federal Court misapprehended the nature of the claims at issue in the summary judgment motion, and wrongly "included the regulated pricing issue with the application of the oil export tax" (Samson's memorandum of fact and law, at paragraph 9).

[17] Finally, Samson argues that if the Alberta *Limitation of Actions Act* is constitutionally applicable to its claims, and if sections 40 and 41 of that legislation are not applicable, the Federal Court erred by finding there was no genuine issue with respect to whether the entirety of Samson's claims related to the Regulated Price Regime issue were statute barred by operation of paragraph 4(1)(*e*) of the Alberta *Limitation of Actions Act*. Samson asserts its claim is not barred for the six years preceding the filing of its statement of claim.

Standard of Review

[18] Samson and Canada submit that the appellate standard of review to be applied is that set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. Samson states that this requires it to demonstrate that the Federal Court committed a palpable and overriding error when it concluded that there was no genuine issue for trial with respect to the applicability of a statutory limitation period to its claims (Samson's memorandum of fact and law, at paragraph 16).

[19] Ermineskin makes no submissions about the standard of review.

[20] I agree that *Housen* applies so that in the absence of an error of law the judgment of the Federal Court may only be set aside if a palpable and overriding error is demonstrated (*Manitoba v. Canada*, 2015 FCA 57, 470 N.R. 187, at paragraph 7).

Application of the Standard of Review

[21] I begin by observing that at paragraphs 90 through 99 of its reasons, the Federal Court articulated the legal principles that are to guide a court when adjudicating a motion for summary judgment. The appellants do not argue that the Federal Court erred in its articulation of these principles. As well, throughout its reasons the Federal Court made numerous findings of fact. The appellants do not argue that any finding of fact is vitiated by a palpable and overriding error.

[22] I now turn to the specific errors asserted by the appellants. It is convenient to deal with the three common issues and the first separate issue advanced by Samson together. These issues require this Court to consider whether the Federal Court erred by determining that:

i. the Crown's motion raised issues which were suitable for summary judgment;

ii. section 39 of the *Federal Courts Act* and paragraph 4(1)(*e*) of the Alberta *Limitation of Actions Act* were constitutionally applicable and operable with respect to the claims in issue;

iii. the claims are not for property held on an express trust; and,

iv. there is no linkage between these claims and the other remaining claims advanced by the appellants.

[23] As mentioned above, on this appeal the appellants reargue a number of points which were rejected by the Federal Court. This is the case with respect to the above four issues.

[24] In my view, the appellants have not demonstrated any error of law or any palpable and overriding error of fact or mixed fact and law in the Federal Court's reasons. I reach this conclusion substantially for the reasons given by the Federal Court. Thus, I would dismiss the appeal as it relates to the above issues.

[25] This leaves for consideration the remaining two issues advanced by Samson.

[26] I turn first to consider whether the Federal Court erred by including the "regulated pricing issue with the application of the oil export tax".

[27] Samson argues that it must be determined which of its specific claims were severed from the main oil and gas issues by the 2002 order of the Federal Court. It argues that the Regulated Price Regime issue is "the oil export tax and the resulting *de facto* ('made in Canada') price regime on oil exported to the United States" (footnotes omitted) (Samson's memorandum of fact and law, at paragraph 24).

[28] The corollary of this is said to be that the Restricted Price Regime phase of the trial does not include Canada's obligations relating to the monthly calculation, collection and crediting of royalties in respect of Samson's oil sold domestically within Canada (Samson's memorandum of fact and law, at paragraph 26).

[29] As explained above, there were two components to the national strategy developed to deal with the effects of rapidly rising international oil prices beginning in late 1973: a freeze on

the cost of oil sold domestically and a tax, later a charge, on export sales of oil. The consequence of the price freeze on domestic sales of oil and gas was that the appellants received lower royalty payments on oil sold domestically than they would have if prices had been allowed to rise to international levels. It follows that the consequence of Samson's argument is to bifurcate the impact of the Program. The impact of the Program on export sales would be decided in the current phase of the trial; the impact of the Program on domestic sales would be decided in the general oil and gas phase.

[30] I reject the notion that the Restricted Price Regime issue does not include Canada's obligations related to Samson's royalties earned on account of oil sold domestically within Canada. I reject this notion for the following reasons.

[31] First, in its pleadings, Samson draws no distinction between royalties owed to it in respect of oil sold domestically and that sold internationally. In its Amended Statement of Claim (No. 4), Samson frames the issues as follows:

> 36. Defendant Her Majesty has breached Her trust or fiduciary, treaty or equitable and other obligations and duties to Plaintiffs referred to in paragraph 18 hereof, or alternatively Defendant Her Majesty was negligent, in respect to the administration, management and supervision of the natural resources of the said reserves and of the foregoing oil and gas leases, particularly:
>
> …
>
> k) in failing to give full and proper effect to the tax exemptions of Plaintiffs <u>and in failing to give full and proper effect to the status of Plaintiffs and their interests with respect to taxes, levies and other impositions purportedly imposed on or with respect to oil and gas, revenues and royalties derived from the reserves</u>;
>
> …
>
> w) <u>in failing to adopt particular legislative, regulatory or other measures for the benefit of Plaintiffs and in their best interests, to properly protect and preserve</u>

> the rights interests and property of Plaintiffs, to maximize the economic returns to Plaintiffs and to deal with the reserves and natural resources in the way most beneficial to Plaintiffs.
>
> (emphasis added)

[32] Second, the 2002 order of the Federal Court that prescribed the stages in which the action would be litigated described the current phase to be the "'Tax' or the 'Regulated Price Regime' phase". The Federal Court was careful in its judgment dismissing the claims to state that "the Plaintiffs' claims … related to the Regulated Price Regime issue are dismissed as being statute-barred". It is clear that the Federal Court intended to dismiss the entirety of the claims advanced during this phase of the litigation.

[33] This makes sense because the national strategy implemented in response to the actions of the Organization of Arab Petroleum Exporting Countries included both the domestic price restriction and the tax or charge on export sales. This is expressly evidenced in the *Petroleum Administration Act*, whose long title is "An Act to impose a charge on the export of crude oil and certain petroleum products … and to regulate the price of Canadian crude oil and natural gas in interprovincial and export trade". Part II of the Act deals with "Domestic Oil". Section 21 of the Act sets out the purpose of Part II, which included enabling the Government of Canada "to achieve a uniform price, exclusive of transportation costs, for crude oil used in Canada outside its province of production" and to "protect consumers in Canada from instability of prices for petroleum in the international markets".

[34] Given this and the obvious evidentiary linkage between the impact on royalties caused by the domestic price restriction and the impact caused by the tax or charge on export sales, at the

time the 2002 order was made the parties cannot have intended or understood that these impacts would be dealt with in separate phases of the trial. Nor did Canada's summary judgment motion deal only with the impact of the Regulated Price Regime (as implemented through the *Petroleum Administration Act*) upon export sales of oil. It follows that the Federal Court did not misapprehend the nature of the claims at issue in the summary judgment issue.

[35] This conclusion is, in my view, supported by the fact that this is not an argument advanced by Ermineskin.

[36] I now turn to the final issue advanced by Samson: did the Federal Court err when it found that there was no genuine issue for trial with respect to whether the entirety of Samson's claims in this phase of the litigation are barred by the application of paragraph 4(1)(*e*) of the Alberta *Limitation of Actions Act*?

[37] In Samson's Amended Statement of Claim (No. 4) at paragraphs 31A(i) and 36(k) it alleges Canada:

> 31A. i) has taxed and has permitted Her Majesty the Queen in Right of the Province of Alberta to illegally tax, the Reserves, including the oil and gas, through various legislative and price regulatory mechanisms and federal/provincial agreements;

and that:

> 36. Defendant Her Majesty has breached Her trust or fiduciary, treaty or equitable and other obligations and duties to Plaintiffs referred to in paragraph 18 hereof, or alternatively Defendant Her Majesty was negligent, in respect to the administration, management and supervision of the natural resources of the said reserves and of the foregoing oil and gas leases particularly:
>
> …

> k) in failing to give full and proper effect to the tax exemptions of Plaintiffs and in failing to give full and proper effect to the status of Plaintiffs and their interests with respect to taxes, levies and other impositions purportedly imposed on or with respect to oil and gas, revenues and royalties derived from the reserves;
>
> (emphasis added)

[38] Samson argues that "each month in which there was a discrepancy in the royalties reserved to the Crown as a result of the application of the oil export tax to royalty oil exported during the previous month, gave rise to a new cause of action falling within [the current phase of the trial]. The [Federal Court] made an error of law in not recognizing this." (Samson's memorandum of fact and law, at paragraph 25).

[39] Samson states that it is entitled to "recover damages for those royalties that were subjected to the oil export tax that were credited to Samson for the six years preceding the filing of its Claim" (Samson's memorandum of fact and law, at paragraph 116).

[40] In advancing this argument, Samson relies upon *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3 where the Supreme Court held, at paragraph 13, that subject to limitation periods and remedial legislation, taxes paid pursuant to legislation later found to be *ultra vires* must be returned. It followed that because the taxpayer's cause of action was complete at the moment the province illegally received payment, in the face of a six year limitation period, taxes paid during the six years preceding the filing date of the initiating judicial process could be recovered.

[41] The Federal Court was mindful of the need to accurately characterize the appellants' claims for limitations purposes. From paragraph 137 to paragraph 145, and at paragraph 248 of its reasons, the Federal Court carefully considered the characterization issue, concluding that:

> 139. … Samson is asserting Aboriginal and treaty rights to royalties from the oil and gas produced on Samson's Reserve lands at the material time, and Samson claims that "the price or value of oil exported from Pigeon Lake on which the Indian Oil and Gas royalty was calculated was incorrect for the years 1973 to 1985, years when the international market price of oil rose substantially" (Samson Memorandum at para 23, footnote omitted). Samson says that "the oil export tax should only have been levied after the Plaintiffs [*sic*] royalty share had been calculated" (Samson Memorandum at para 25, emphasis removed). It is the levying of the export tax, and then the charge, before the Plaintiffs' royalties were calculated that is the basis of their claims. The cause of action pled is a breach of trust or fiduciary duty for permitting the Plaintiffs' royalty revenues to be reduced as an indirect impact of the Program, that is the heart of the claim. …
>
> …
>
> 141. As Samson points out, the interests that Samson seeks to protect enjoy special recognition under the *Indian Oil and Gas Act* which provides that monies paid to Canada as royalty monies on oil and gas production have to be held in trust for the use and benefit of Samson. In essence, I think it is clear that the claims are based upon the breach by Canada of some kind of *sui generis* fiduciary or trust-like obligations (arising from statute or otherwise) that required Canada to exempt the Plaintiffs from the indirect impact of the program upon their royalty entitlement from oil and gas produced on their reserves.
>
> (emphasis added)

[42] The characterization of the appellants' claim is a question of mixed fact and law. Based on my review of the pleadings and the record, the appellants have not demonstrated any extricable error of law or any palpable and overriding error of fact or mixed fact and law in the Federal Court's characterization of the appellants' claims.

[43] Having so characterized the claims, the Federal Court then dealt with Samson's argument that there was a recurring breach of duties owed to it so that the cause of action arose on a monthly basis. The Federal Court did so at paragraphs 185 to 188 of its reasons.

[44] There, the Federal Court found that the appellants' Program related claims crystallized no later than 1978 when they became aware of the impact of the Program on their royalty entitlements and when they were advised that oil and gas production from their Reserve would not be exempted from the Program. Samson's claim, commenced in 1989, was therefore statute barred as it was commenced more than six years after the cause of action accrued.

[45] The question of whether a claim is statute barred is a question of mixed fact and law. Samson has not shown any extricable error of law or any palpable and overriding error of fact or mixed fact and law in the reasons of the Federal Court.

[46] Moreover, this is not a motion to strike a pleading where one must presume the truth of the material facts as pleaded. Rather, on a motion for summary judgment a court is required, among other things, to make necessary findings of fact (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paragraph 49).

[47] Further, accepting the truth of the facts as pled would be contrary to the established jurisprudence that while, on a motion for summary judgment the onus is on the moving party to establish the absence of a genuine issue for trial, there is an evidentiary burden on the responding party to present evidence showing there is a genuine issue for trial. In meeting this burden, the

responding party may not rest on the allegations in its pleadings (see, for example, *Collins v. Canada*, 2015 FCA 281, 480 N.R. 274, at paragraphs 70 to 71).

[48] Here, the record does not support the allegation that Samson's royalty interests in oil were subjected to the oil export tax. The tax was levied at Canada's border upon the oil and gas companies that exported oil. At this time, and at this place, all exported oil had lost its identity of origin. The tax was therefore not levied on Samson or its royalties. The tax was more akin to a levy on American purchasers, collected by the oil and gas companies and remitted to Canada, to ensure Canada received the same price for its exported oil that it paid for its imported oil.

[49] Put another way, the Program was not directed at the appellants. It was a national program that applied to oil produced anywhere in Canada. The Program impacted the appellants only indirectly.

[50] It follows that there is no genuine issue as to whether Samson's royalties were subjected to the oil export tax.

[51] It follows that Samson's argument must fail.

Conclusion

[52] For these reasons, I would dismiss the appeals with costs payable from the appellants to the respondents in each appeal.

"Eleanor R. Dawson"
J.A.

"I agree.
Marc Nadon J.A."

WEBB J.A. (Dissenting Reasons)

[53] I agree with the proposed disposition of Ermineskin's appeal. However, I am unable to agree with the proposed disposition of Samson's appeal as it relates to the tax issue. I would allow Samson's appeal in relation to the issue of whether Canada has improperly or illegally taxed the property of Samson. This claim would be restricted to only the amounts collected by Canada within the six year period prior to the commencement of the within action by Samson.

[54] The Federal Court Judge noted in paragraph 1 of his reasons that the basis for the motion for summary judgment was that the claims were time-barred. As a result, the only issue before the Federal Court was whether the claims were made within the applicable limitation period. The merits of the particular claims were not before the Federal Court Judge. He confirmed this in paragraph 89:

> 89 It should always be borne in mind that in deciding whether summary judgment based upon the expiry of a limitation period is appropriate, the Court is not pronouncing upon the merits of the underlying claims. In the present case, the Plaintiffs may well have legitimate complaints, in both fact and law, about the impact of the Program upon their royalty entitlement and Canada's handling of the royalties arising from oil and gas extraction on the Plaintiffs' Reserves. But the law of limitations provides that, generally speaking, even a legitimate claim must be brought within a prescribed period of time unless, of course, the claim is one that is not subject to a limitations defence. It may be necessary at times to look at the merits in order to understand what is at stake in these motions and the role that a limitations defence should play given the nature of the claims in question but, in the end, the Court is deciding whether or not there is a genuine issue for trial on the limitations defence and not whether the claims have merit.

[55] The Judge confirmed this in paragraph 93:

> 93 The governing jurisprudence clearly establishes that, in order to succeed on this motion, Canada must demonstrate to the Court that there is no genuine issue for trial which, in this instance, means no genuine issue regarding the existence and application of a limitations defence to time-bar the Program-related

> claims. See *Lameman* SCC, above at para 11; *Manitoba v Canada*, above, at para 15.

[56] As a result, in my view, the only issues that were before the Federal Court were:

> (a) What claims were being made?
>
> (b) What is the limitation period applicable to each claim?
>
> (c) When did the applicable limitation period for each claim commence?
>
> (d) Was the claim made within the applicable limitation period for that claim?

[57] Whether Samson would be successful in its claim that the amounts imposed under the Program were a tax was not the issue that was before the Federal Court. The only issue was whether Samson had made the claim that it was a tax within the applicable limitation period.

[58] In addition to the claims made by Samson at paragraphs 31A(i) and 36(k) of its Amended Statement of Claim (No. 4) referred to in paragraph 37 above, in this Statement of Claim Samson claimed, in part, the following relief:

> WHEREFORE Plaintiffs claim the following relief against Defendants:
>
> 1. A declaration that Defendant Her Majesty breached Her trust, fiduciary, treaty, constitutional, statutory, common law, equitable or other obligations and duties to Plaintiffs:
>
> …
>
> c) in failing to give full effect to the tax exemptions of Plaintiffs in respect to oil and gas royalties from the Pigeon Lake Indian Reserve and Samson Indian Reserve No. 137, and by improperly levying taxation against the Plaintiffs' royalty interests in oil and gas production and land use in violation of s. 87 of the *Indian Act* and the treaty and aboriginal rights and powers of Plaintiffs.

[59] Included in the appeal book is a document entitled “Defendants’ Position on the Issues”. In this document, after describing the Program in general terms, the Defendants to the action stated, in part, that:

> The issues would appear to the Crown to be as follows:
>
> …
>
> 2. Did the above scheme constitute a tax contrary to law? (See *Indian Act*, SS 87 and 90.)

[60] As a result, in my view, Samson did raise the issue of whether the Program resulted in a tax being imposed on Samson and the Crown acknowledged that this issue had been raised. For the purposes of the motion that was before the Federal Court, the only remaining issue would be whether this claim was made within the applicable limitation period.

[61] In *Kingstreet Investments Ltd.* the Supreme Court concluded that a claim for taxes that were illegally collected were subject to the general limitation period in the New Brunswick *Limitation of Actions Act*, R.S.N.B. 1973, c. L-8, s. 9. The corresponding provision in the Alberta *Limitation of Actions Act* is paragraph 4(1)(*g*) which provides for a six year limitation period after the cause of action arose.

[62] In *Kingstreet Investments Ltd.*, the Supreme Court also noted that:

> 61 Finally, the point at which time will begin to run must be determined. The cause of action was complete at the moment the Province illegally received the payment. For this reason, the appellants can only recover the user charges paid during the six years preceding the filing date of their Notice of Application (May 25, 2001).

[63] Therefore, in my view, the applicable limitation period for the claim that Canada had improperly collected taxes would begin when the particular amounts were collected by Canada. The application of this limitation period would result in Samson's claims for any amounts collected more than six years prior to the commencement of its action being dismissed. Since, however, there were some amounts that were collected by Canada during the six years immediately prior to Samson commencing its action, Samson's claim that Canada had improperly collected a tax should be allowed to continue in relation to these amounts.

[64] I would, therefore, allow Samson's appeal but only with respect to the issue of whether Canada had improperly imposed a tax in relation to any amounts collected by Canada during the six year period immediately preceding the date that Samson commenced its action against Canada.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-325-15
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CONCURRED IN BY:	NADON J.A.
DISSENTING REASONS BY:	WEBB J.A.
DATED:	SEPTEMBER 8, 2016

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