Federal Court of Appeal | Cour d'appel fédérale

**Date: 20170920**

**Dockets: A-128-15**
**A-129-15**
**A-306-15**
**A-307-15**

**Citation: 2017 FCA 193**

**CORAM:** **PELLETIER J.A.**
**BOIVIN J.A.**
**WOODS J.A.**

**Dockets: A-128-15**
**A-307-15**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**REPSOL CANADA LTD.**

**Respondent**

**Dockets: A-129-15**
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**AND BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**REPSOL ENERGY CANADA LTD.**

**Respondent**

Heard at Calgary, Alberta, on May 2, 2017.

Judgment delivered at Ottawa, Ontario, on September 20, 2017.

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: PELLETIER J.A.
BOIVIN J.A.

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## REASONS FOR JUDGMENT

**WOODS J.A.**

[1] The Crown has appealed from judgments of the Tax Court of Canada (2015 TCC 21) that determined the appropriate capital cost allowance (CCA) class of a regasification facility (the facility) for purposes of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act). The capital cost of the facility is approximately $1.2 billion.

[2] The Crown also appeals from a separate order dealing with costs (2015 TCC 154), as amended. The Crown seeks to have the costs award set aside if it is successful on the main issue in this Court.

[3] The Tax Court (*per* C. Miller J.) agreed with the respondents, Repsol Canada Ltd. and Repsol Energy Canada Ltd. (together Repsol), that the facility falls in Class 43, as opposed to Classes 1 and 3 as the Crown suggests.

[4] There is a significant difference in tax treatment between the classes. Classification under Class 43, which is an incentive provision for manufacturing and processing, enables CCA to be claimed at a 30 percent rate and also enables the property to qualify for investment tax credits. The corresponding CCA rates for Classes 1 and 3 are four and five percent, and there is no entitlement to investment tax credits.

[5] The central issue in this appeal is whether the facility is part of a gas distribution system for purposes of Class 1(*n*). The taxation years at issue are 2007 and 2008.

[6] It is worth noting at the outset that a subsequent amendment to the Income Tax Regulations now classifies regasification facilities as Class 47 effective for property acquired after March 18, 2007. Such facilities are now entitled to CCA at the rate of eight percent and they are not entitled to investment tax credits.

## I. Background facts

[7] The Crown does not dispute the facts as found by the Tax Court, which are detailed and comprehensive. A brief summary is sufficient for purposes of this appeal.

[8] In 2005, a partnership was formed by the two Repsol respondents and two members of the Irving Oil organization in order to build and operate a regasification plant in St. John, New Brunswick. The partnership interests of Repsol and Irving Oil were 75 percent and 25 percent, respectively.

[9] The facility was constructed to provide regasification services for Repsol Energy Canada Ltd. (RECL), one of the respondents. RECL planned to import liquid natural gas (LNG) that is transported by tanker from offshore, regasify the LNG, transport the gas by pipeline to the United States border, and then sell the gas to another Repsol affiliate for marketing in the United

States. Regasification is a necessary step in the process because the gas needs to be converted to a liquid state before it can be shipped by tanker.

[10] RECL acquires title to the LNG as it is offloaded from the tankers at the facility. The LNG is blended and then regasified by the partnership before being delivered to a third party transmission line (the Brunswick Pipeline). This line was built specifically to transport the gas for RECL to the United States border where it is then sold to another Repsol affiliate.

[11] Approximately 50 percent of the LNG is purchased by RECL from other Repsol affiliates.

[12] The services provided by the partnership include receiving, storing, and regasifying the LNG for RECL. The facility contains a deep water pier (the Jetty) for tankers to dock, and equipment and structures (the Terminal) such as storage tanks, a high pressure tank and a vaporizer to convert the LNG into gaseous form. Part of the Terminal is located above the Jetty. The operations at the facility are complex, due to the necessity to ensure the quality of the gas and to prevent accidents.

[13] Finally, the facility was constructed in a manner that allowed alteration to accommodate the importation of oil by Irving Oil.

[14] Repsol, as partners in the partnership that owns the facility, are entitled to deduct their share of partnership losses for purposes of the Act. After CCA for manufacturing and processing

under Class 43 was claimed in Repsol's corporate tax returns, the Minister of National Revenue issued notices of determination of loss that recalculated the losses on the basis that the Terminal fell within Class 1(*n*) and the Jetty fell within Class 3(*h*).

## II. Issue and standard of review

[15] The issue to be determined is whether the Tax Court erred in concluding that the facility was not within Classes 1(*n*) and 3(*h*) for CCA purposes.

[16] The *Housen* standard of review applies to this issue so that extricable questions of law are to be decided on the basis of correctness, and questions of fact and mixed fact and law are to be decided on the basis of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.

## III. Relevant legislative scheme

[17] Under the Act, a taxpayer may generally deduct the cost of depreciable property over a period of years at the rates prescribed for classes of property set out in Schedule II to the Regulations (paragraph 20(1)(*a*) of the Act).

[18] The relevant CCA classes and rates are 30 percent for Class 43, four percent for Class 1, and five percent for Class 3 (paragraph 1100(1)(*a*) of the Regulations).

[19] Class 1(*n*) applies to certain gas manufacturing and distributing equipment and plant. The relevant part is set out below.

| Class 1 | Catégorie 1 |
|---|---|
| Property not included in any other class that is | Les biens non compris dans aucune autre catégorie constitués par |
| … | […] |
| (*n*) manufacturing and distributing equipment and plant (including structures) acquired primarily for the production or distribution of gas, except | *n*) le matériel et l'installation de fabrication et de distribution (y compris les structures) acquis principalement pour la production ou la distribution du gaz, à l'exception : |
| … | […] |
| (ii) a property acquired for the purpose of processing natural gas, before the delivery of such gas to a distribution system, or | (ii) d'un bien acquis en vue de transformer du gaz naturel, avant sa livraison à un réseau de distribution, |
| … | […] |

[20] Class 3(*h*) describes a jetty that does not fall within another Class.

| Class 3 | Catégorie 3 |
|---|---|
| Property not included in any other class that is | Les biens non compris dans aucune autre catégorie constitués par |
| … | […] |
| (*h*) a jetty acquired after May 25, 1976; | *h*) une jetée acquise après le 25 mai 1976; |
| … | […] |

[21] Class 43 is a complex provision and it is not necessary to reproduce it here. It is sufficient to note that certain manufacturing and processing property listed in Class 29 qualifies under Class 43. The relevant parts of Class 29 are set out below.

| Class 29 | Catégorie 29 |
|---|---|
| Property … that would otherwise be included in another class in this Schedule | Les biens, […] qui seraient compris par ailleurs dans une autre catégorie de la présente annexe et qui remplissent les conditions suivantes : |
| (*a*) that is property manufactured by the taxpayer, the manufacture of which was completed by him after May 8, 1972, or other property acquired by the taxpayer after May 8, 1972, | *a*) c'est-à-dire les biens fabriqués par le contribuable et dont la fabrication a été achevée après le 8 mai 1972, ou autres biens acquis par le contribuable après le 8 mai 1972, |
| (i) to be used directly or indirectly by him in Canada primarily in the manufacturing or processing of goods for sale or lease, or | (i) et devant être utilisés directement ou indirectement par lui au Canada surtout pour la fabrication ou la transformation de marchandises en vue de la vente ou de la location, ou |
| … | […] |
| [and] | [et] |
| … | […] |
| (*b*) that is | *b*) c'est-à-dire |
| (i) property that, but for this class, would be included in Class 8, … | (i) les biens qui, sans la présente catégorie, seraient compris dans la catégorie 8, […] |
| … | […] |

[22] The provision above requires that the property also be described in Class 8. Class 8 includes certain manufacturing or processing property, and excludes property in Class 1. The relevant part reads:

| | |
|---|---|
| Class 8 | Catégorie 8 |
| Property not included in Class 1, … that is | Les biens non compris dans les catégories 1, … qui sont constitués par : |
| (*a*) a structure that is manufacturing or processing machinery or equipment; | *a*) une structure consistant dans des machines ou du matériel de fabrication ou de transformation; |
| (*b*) tangible property attached to a building and acquired solely for the purpose of | *b)* des biens corporels faisant partie d'un immeuble et acquis uniquement aux fins suivantes : |
| (i) servicing, supporting or providing access to or egress from, machinery or equipment, | (i) entretenir, soutenir, fournir un accès à des machines ou du matériel, ou en sortir, |
| (ii) manufacturing or processing, or | (ii) fabriquer ou transformer, ou |
| (iii) any combination of the functions described in subparagraphs (i) and (ii); | (iii) toute combinaison des fonctions prévues aux sous-alinéas (i) et (ii); |
| (*c*) a building that is a kiln, tank or vat, acquired for the purpose of manufacturing or processing; | *c*) un immeuble qui est un four, un réservoir ou une cuve, acquis aux fins de fabrication ou de transformation; |
| … | […] |

## IV. The Tax Court decision

[23] The Tax Court concluded first that the Terminal is excluded from Class 1(*n*) by virtue of the exception in clause (ii). Central to this conclusion are two findings. First, the nature of the operations at the Terminal are processing. Second, these operations take place prior to delivery of the gas to a "distribution system," which delivery occurs either at the entrance to the

Brunswick Pipeline, a transmission line, or at the entrance of shorter-distance distribution pipelines in the United States.

[24] The Tax Court also concluded that the Terminal falls within Class 43. There are two main reasons for this: the Terminal is not within Class 1, and the Terminal is to be used primarily for the purpose of processing goods for sale.

[25] As for the Jetty, the Tax Court concluded that the Jetty also falls within Class 43 because it is an integral part of the operations at the Terminal.

## V. Position of the appellant

[26] The Crown submits that there are errors of law in the Tax Court's analysis. The Court's findings of fact are not challenged in this appeal.

[27] The Crown's submissions focus on the Tax Court's analysis of Classes 1 and 3 rather than Class 43. In particular, the Crown submits that the Terminal does not fall within the exclusion in clause (ii) of Class 1(*n*) and that the Jetty falls within Class 3(*h*).

[28] The bulk of the Crown's submissions concern the Terminal, and the arguments concerning the Jetty are quite brief. With respect to the Terminal, the Crown submits that the exclusion in clause (ii) of Class 1(*n*) does not apply, first and foremost because the Terminal was part of a distribution system, and second because the operations at the Terminal were not

processing. As for the Jetty, the Crown submits that the Tax Court erred in not applying Class 3 because this class specifically mentions a jetty, and the Tax Court should not have applied the judge-made integration test which resulted in the Jetty being in Class 43 along with the Terminal.

[29] A number of arguments were made in support of these positions, which are outlined below. Most are in support of the position that the Terminal was part of distribution. In particular, the Crown submits that the Tax Court:

- failed to consider if the facility was distribution equipment and plant,
- disregarded legislative history,
- failed to take into account that the Tax Court's interpretation takes away all meaning from Class 1(*n*),
- failed to conclude that the facility was primarily for distribution and not processing before delivery to a distribution system,
- failed to apply the conclusion of this Court that the term "distribution" and "distributing" in Class 1(n) have broad meanings: *Northern & Central Gas Corporation Limited v. The Queen*, [1987] 2 C.T.C. 241, 87 D.T.C. 5439 (F.C.A.),

- failed to take into account that delivery by tanker or pipeline is not a reason to distinguish *Northern & Central*,

- failed to apply the principle in *Northern & Central* that distribution is intended to encompass everything from production to ultimate distribution to end users,

- erred in concluding that the facility is involved in processing,

- erred in relying on *The Queen v. Nova, an Alberta Corporation*, [1988] 2 C.T.C. 167, 88 D.T.C. 6386 (F.C.A.),

- erred by commencing the analysis with Class 8 which specifically excludes property falling within Class 1,

- erred by not taking into account the enactment of section 125.1 of the Act, which provides that the operations of a public utility do not constitute manufacturing and processing, and

- failed to consider that Class 3 specifically includes a jetty.

VI. Is the Terminal in Class 1(*n*)?

[30] The Tax Court concluded that Class 1(*n*) did not apply to the Terminal because this property qualifies for the exclusion in clause (ii) of Class 1(*n*).

[31] It is useful to reproduce Class 1(*n*) again.

| Class 1 | Catégorie 1 |
|---|---|
| Property not included in any other class that is | Les biens non compris dans aucune autre catégorie constitués par |
| … | […] |
| (*n*) manufacturing and distributing equipment and plant (including structures) acquired primarily for the production or distribution of gas, except | *n*) le matériel et l'installation de fabrication et de distribution (y compris les structures) acquis principalement pour la production ou la distribution du gaz, à l'exception : |
| … | […] |
| (ii) a property acquired for the purpose of processing natural gas, before the delivery of such gas to a distribution system, or | (ii) d'un bien acquis en vue de transformer du gaz naturel, avant sa livraison à un réseau de distribution, |
| … | […] |

[32] The exclusion in clause (ii) applies to equipment and plant acquired primarily for the purpose of processing natural gas, if the processing takes place prior to delivery to a distribution system. As mentioned above, the Tax Court determined that the operations at the Terminal constituted processing and that they occurred prior to delivery to a distribution system.

[33] Primarily, the Crown takes the position that the Terminal does not fall within the clause (ii) exclusion because it is part of distribution. Secondarily, the Crown argues that the operations at the Terminal are not processing.

[34] As a preliminary comment, if the Tax Court erred in its conclusion that the Terminal is not within Class 1(*n*), the Crown should succeed in this appeal because Class 1 trumps Class 43. As mentioned above, in order for the Terminal to qualify under Class 43, it must also be property described in Class 8. This class excludes property described in Class 1 (see opening language in Class 8, above). Thus, Class 1 takes precedence over Class 43.

[35] On the key issue of whether the Terminal is part of "distribution," the Tax Court provides two reasons for concluding that it was not. The first relates to the purpose of the facility: "the main purpose of the processing was to render the natural gas marketable (i.e., for sale)." It was not mainly for distribution. The second reason is based on statutory interpretation: "the processing before delivery exclusion [in clause (ii)] can only make sense if the distribution starts with the transmission line (or, if I were to follow the industry view, the distribution line)" (Decision at paras 114-121).

[36] As I understand the Crown's position on distribution, it does not challenge the factual findings of the Tax Court that the main purpose of the facility was to make the gas more marketable rather to be part of a distribution system. Rather, the Crown submits that as a matter of statutory interpretation the facility is part of distribution. The Crown's specific arguments are discussed below.

*Failed to consider meaning of distribution*

[37] At the hearing, the Crown vigorously argued that the Tax Court improperly focussed on Class 8 (manufacturing and processing) rather than Class 1(*n*), and in particular that it did not focus on the meaning of the term "distribution."

[38] I think the Crown misinterprets the Tax Court's reasons, perhaps because the Court combined its analysis of Class 8 (processing for sale) and Class 1 (processing as part of distribution). This is evident from how the Tax Court described the crux of the case: "whether the processing that occurred is processing of goods for sale or processing for storage that is part of distribution" (Decision at para 114).

[39] In any event, the Tax Court tackled the issue of distribution head on and its reasons are clearly set out in paragraphs 114-121, as mentioned above.

[40] The Tax Court's reasons on distribution focus primarily on statutory interpretation: the clause (ii) exclusion only makes sense if distribution starts at a pipeline (Decision at para 121). I agree with this conclusion.

[41] As noted by the Tax Court, the Crown was invited to explain what the clause (ii) exclusion was meant to capture under its interpretation and was not able to do so (Decision at paras 47 and 120). And in this Court, the Crown was asked when the "distribution system" starts for purposes of this case. Counsel indicated that it was difficult to say, and that Repsol should

have provided expert evidence on this point. In my view, it is not a satisfactory answer to say that expert evidence was required. The meaning of the term "distribution" in the context of Class 1(*n*) is for the courts, rather than an industry expert, to determine.

*Disregarded legislative history*

[42] The Crown also submits that the Tax Court erroneously disregarded the legislative context. If the context is properly considered, the Crown suggests, it is clear that the Terminal should not qualify for CCA at the rate of 30 percent. For example, the Crown notes that the Regulations now provide for a CCA rate of eight percent for a regasification facility under Class 47.

[43] First, I disagree that the Tax Court disregarded the legislative context. The Tax Court's reasons discuss at some length the legislative history and various amendments that have been made (Decision at paras 42-60).

[44] The Crown appears to take the view that the drafters of the CCA classes must have intended a low rate of depreciation for the facility because the 30 percent depreciation rate under Class 43 which generally applies to manufacturing and processing equipment is far too generous for the facility. I do not agree that this was the intention of the drafters. There is no reason to believe that the drafters of the CCA classes had this type of property in mind. If the government believes that Class 43 is too generous for this type of property, the answer is to change the Regulations. As mentioned above, the government did implement such a change effective for

property acquired after March 18, 2007. The CCA rate for this type of property is now eight percent.

[45] Moreover, the clause (ii) exclusion in Class 1(*n*) appears to recognize that the low CCA rate in Class 1 is not appropriate for processing plant and equipment that is not within a distribution system. There is some logic that such plant and equipment should qualify for the CCA rates generally applicable to manufacturing and processing.

*Interpretation takes away all meaning of Class 1(n)*

[46] The Crown also suggests that the Tax Court's interpretation strips Class 1(*n*) of all meaning. I disagree. As noted by counsel for Repsol, the exclusion in clause (ii) applies to processing plant and equipment used prior to delivery to a distribution system. Under the Tax Court's interpretation, plant and equipment which is part of a distribution system, such as the equipment on the transmission pipeline in *Northern & Central*, continues to be subject to Class 1(*n*), as does production plant and equipment. Class 1(*n*) continues to have meaning.

*Failure to give "distribution" a broad meaning*

[47] The Crown suggests that this Court's decision in *Northern & Central*, above, requires that distribution encompass all activities after production.

[48] Again, I disagree. The *Northern & Central* decision stands for the proposition that the term "distribution" can encompass not only short-distance pipelines, in accordance with industry usage, but also long-distance transmission lines. It did not state a broader principle. Note, for example, the emphasized parts below from the Federal Court of Appeal's decision which indicate that the Court was mindful not to extend its interpretation beyond the facts of that case, including to the exclusions in Class 1(*n*):

> … In my view, subject to the exceptions specified, the distinction it draws as applied to this case is between property of the appellant that is manufacturing equipment and plant acquired primarily for the *production* of gas and property that is distributing equipment and plant acquired primarily for the *distribution* of gas subsequent to its production. (p. 5442, DTC)
>
> [emphasis added, italics in original]

*Delivery by tankers is not a distinction*

[49] The Crown submits that the facts in the present case are indistinguishable from *Northern & Central*, and in particular, that there is no difference between delivery by tanker or transmission pipeline. In *Northern & Central*, the processing took place along a transmission pipeline. As mentioned above, this Court concluded that the term "distribution" in this context includes a transmission line.

[50] I disagree with the Crown's submission. First, there are important factual differences between the present case and *Northern & Central*. For example, in *Northern & Central*, the natural gas enters and leaves the plant in a gaseous state. In the present case, the gas enters the plant in a liquid state and leaves in a gaseous state. Also, the main purpose of the processing

plant in *Northern & Central* was to provide storage in the course of transmission, and the main purpose of the processing in this case is to make the gas more marketable.

[51] Moreover, in my view it would be unfair to Repsol for the Crown to raise this argument in this Court because the Crown stated at the opening of the Tax Court hearing that it was not taking this position. According to the transcript, the Crown stated during its opening that whether transport by tanker was part of distribution was not at issue (Appeal Book, p. 2418, lines 9-13). It would be unfair to Repsol for the Crown to take a different position at this stage of the proceedings, as Repsol might have led different evidence at the Tax Court.

*Terminal is not involved in processing*

[52] The Crown submits that the Tax Court erred in concluding that the operations at the Terminal involve processing.

[53] In paragraph 36 of its memorandum, the Crown submits that the activities at the facility are not processing because the partnership does not deal with raw gas or transform the gas into something else. It submits that, whether in liquid or a gaseous form, the product is "a gas composed of at least 90 to 95 percent methane, and the parties to the different contracts define the term 'gas' as such."

[54] With respect, I disagree that the partnership does not transform the product. It is clear that the product has been changed when it is transformed from a liquid to a gaseous state. The

Crown, however, relies on definitions of “gas” and “LNG” in commercial contracts. Contractual definitions are irrelevant to the question as to whether the operations at the facility transform the product. In any event, the definitions do not support the Crown’s position. The definitions in the partnership agreement referred to by the Crown are set out below (Appeal Book, p. 163, 165).

> “Gas” means any hydrocarbon or mixture of hydrocarbons consisting predominantly of methane that is in a gaseous state.
>
> “LNG” means Gas in a liquid state at or below its boiling point at a pressure of approximately one (1) atmosphere.

[55] The definition of LNG above is not as precise as it could be, but the meaning is clear: “Gas” is defined as in a gaseous state and “LNG” is defined as in a liquid state. The important point is that there is a change in the form of the product when Gas is transformed into LNG. The Crown seems to suggest that there is no difference between Gas and LNG. I disagree.

[56] Furthermore, the Tax Court did not rely solely on the change in the product from a gaseous form to a liquid. The Court also mentioned the change that takes place during the facility’s blending operations, and a change in chemical composition (Decision at paras 108, 109). In addition, the Tax Court concludes that the operations at the facility transform the product from being non-marketable in the North American market, to being marketable (Decision at para 112).

[57] These conclusions are findings of mixed fact and law for which the standard of review is palpable and overriding error. In my view, there is no such error.

*Nova should not have been relied on*

[58] The Crown also suggests that the Tax Court erred by relying on *Nova*, above. The Federal Court of Appeal in that case concluded that, in the predecessor to Class 1(*n*), the term "distribution" is limited to short-distance distribution pipelines and does not encompass long-distance transmission pipelines. It is clear from the Tax Court's reasons that it was aware that this is an unsettled issue. It concluded that it was unnecessary to decide the point because the operations at the Terminal took place before delivery to either a transmission or distribution pipeline (Decision at para 117).

*Failed to take into account section 125.1*

[59] The Crown suggests that the Tax Court failed to take into account section 125.1 of the Act. This section provides a tax credit for income from manufacturing and processing. The operations of a public utility are not included within the definition of "manufacturing and processing" in this section.

[60] The Crown's argument suggests that section 125.1 demonstrates a legislative intent to exclude public utilities from manufacturing and processing incentives. The Crown also suggests that the partnership in this case operates as a public utility.

[61] There are two flaws with this argument. First, it has not been established that the partnership operates as a public utility. Second, the exclusion of public utilities in section 125.1

only applies for purposes of that section. No inference can be drawn concerning other manufacturing and processing incentives.

## VII. Is the Jetty in Class 3?

[62] The Crown submits that Class 3(*h*) applies to the Jetty because the term "jetty" is specifically mentioned in that paragraph.

[63] The Tax Court concluded that the Jetty was properly classified in the same manner as the Terminal under Class 43 because the Jetty is an integral part of the Terminal.

[64] The Crown's submission fails to properly take into account the opening words of the class – Class 3 only applies to property "not included in any other class." This is not a situation where specific words in legislation take precedence over more general language. If the Jetty falls within Class 43, that is the end of the matter.

[65] At the hearing, the Crown did not dispute that the Jetty is integral to the Terminal operations, but suggested that the integration principle should not apply in light of the specific inclusion of a jetty in Class 3(*h*). The judge-made integration principle provides that processing includes all activities that are necessary and integral to the processing operation (*Bunge of Canada Ltd. v. The Queen*, 84 D.T.C. 6276 (F.C.A.)). It is appropriate for the Tax Court to apply this well-accepted principle in this context.

## VIII. Conclusion

[66] In the result, there is no reviewable error in the conclusions reached by the Tax Court.

[67] I would dismiss the two main appeals which are in Court File Nos. A-128-15 and A-129-15, with one set of costs for both appeals. Although separate appeals were brought in respect of each respondent, the issues are identical in both.

[68] The other two appeals, in Court File Nos. A-307-15 and A-306-15, relate to costs and were also brought separately in respect of each respondent. As mentioned above, the Crown seeks to have the Tax Court's award of costs set aside if the Crown is successful in the main appeals. Since the Crown was not successful, I would dismiss the other two appeals, without costs.

"Judith M. Woods"
J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
Richard Boivin J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | A-128-15 AND A-307-15 |
| **STYLE OF CAUSE:** | HER MAJESTY THE QUEEN v. REPSOL CANADA LTD. |
| **AND DOCKET:** | A-129-15 AND A-306-15 |
| **STYLE OF CAUSE:** | HER MAJESTY THE QUEEN v. REPSOL ENERGY CANADA LTD. |
| **PLACE OF HEARING:** | CALGARY, ALBERTA |
| **DATE OF HEARING:** | MAY 2, 2017 |
| **REASONS FOR JUDGMENT BY:** | WOODS J.A. |
| **CONCURRED IN BY:** | PELLETIER J.A.<br>BOIVIN J.A. |
| **DATED:** | SEPTEMBER 20, 2017 |

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| | |
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| Robert D. McCue | FOR THE RESPONDENTS |

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