

**Date: 20060503**

**Dockets: A-352-05  
A-353-05**

**Citation: 2006 FCA 161**

**CORAM : DÉCARY J.A.  
LÉTOURNEAU J.A.  
PELLETIER J.A.**

**BETWEEN:**

**NATIONAL BANK LIFE INSURANCE,  
LIFE INSURANCE COMPANY**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held at Montréal, Quebec, on May 1, 2006.

Judgment rendered at Montréal, Quebec, on May 3, 2006.

**REASONS FOR JUDGMENT:**

**LÉTOURNEAU J.A.**

**CONCURRED IN BY:**

**DÉCARY J.A.  
PELLETIER J.A.**

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**REASONS FOR JUDGMENT**

**LÉTOURNEAU J.A.**

[1] These two appeals were joined for procedural purposes and for hearing. They were filed from a decision of the Tax Court of Canada regarding the interpretation of provisions relating to the goods and services tax. In particular, the provisions at issue are sections 1 and 2 of Part IX of Schedule VI of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act). I also set out section 3 of the schedule, since it helps in understanding the issue. The provisions read as follows:

PART IX

FINANCIAL SERVICES

1. A supply of a financial service (other than a supply that is included in section 2) made by a financial institution to a non-resident person, except where the service relates to

(a) a debt that arises from

(i) the deposit of funds in Canada, where the instrument issued as evidence of the deposit is a negotiable instrument, or

(ii) the lending of money that is primarily for use in Canada;

(b) a debt for all or part of the consideration for a supply of real property that is situated in Canada;

(c) a debt for all or part of the consideration for a supply of personal property that is for use primarily in Canada;

(d) a debt for all or part of the consideration for a supply of a service that is to be performed primarily in Canada; or

(e) a financial instrument (other than an insurance policy or a precious metal) acquired, otherwise than directly from a non-resident issuer, by the financial institution acting as a

PARTIE IX

SERVICES FINANCIERS

1. La fourniture d'un service financier, à l'exception d'une fourniture figurant à l'article 2, effectuée par une institution financière au profit d'une personne non résidente, sauf s'il est lié à ce qui suit :

a) une dette qui découle :

(i) soit du dépôt de fonds au Canada, si l'effet faisant foi du dépôt est négociable,

(ii) soit du prêt d'argent à utiliser principalement au Canada;

b) une dette pour tout ou partie de la contrepartie de la fourniture d'un immeuble situé au Canada;

c) une dette pour tout ou partie de la contrepartie de la fourniture d'un bien meuble à utiliser principalement au Canada;

d) une dette pour tout ou partie de la contrepartie de la fourniture d'un service à exécuter principalement au Canada;

e) un effet financier, sauf une police d'assurance ou un métal précieux, acquis, autrement que directement d'un émetteur non-résident, par l'institution financière

principal.

agissant à titre de mandant.

2. A supply made by a financial institution of a financial service that relates to an insurance policy issued by the institution (other than a service that relates to investments made by the institution), to the extent that

2. La fourniture par une institution financière d'un service financier lié à une police d'assurance établie par l'institution, à l'exception d'un service lié aux placements de l'institution, dans la mesure où :

(a) where the policy is a life or accident and sickness insurance policy (other than a group policy), it is issued in respect of an individual who at the time the policy becomes effective, is a non-resident individual;

a) s'agissant d'une police d'assurance-vie, d'assurance-accident ou d'assurance-maladie (sauf une police collective), la police est établie au titre d'un particulier qui, au moment de l'entrée en vigueur de la police, est un particulier non résident;

(b) where the policy is a group life or accident and sickness insurance policy, it relates to non-resident individuals who are insured under the policy;

b) s'agissant d'une police collective d'assurance-vie, d'assurance-accident ou d'assurance-maladie, la police concerne des particuliers non résidents qui sont assurés aux termes de la police;

(c) where the policy is a policy in respect of real property, it relates to property situated outside Canada; and

c) s'agissant d'une police visant un immeuble, la police concerne un immeuble situé à l'étranger;

(d) where the policy is a policy of any other kind, it relates to risks that are ordinarily situated outside Canada.

d) s'agissant d'un autre type de police, la police concerne des risques qui sont habituellement situés à l'étranger.

3. A supply of a financial service that is the supply of precious metals where the supply is made by the refiner thereof or by the person on whose behalf the precious metals were refined.

3. La fourniture d'un service financier qui consiste en la fourniture de métaux précieux par le raffineur ou par la personne pour le compte de laquelle les métaux ont été raffinés.

[Emphasis added.]

[2] The Court has to determine here whether the financial services supplied by the appellant to Natcan Insurance Company Inc. (Natcan) constitute an exempted supply of services or a zero-rated supply of services. I should note that Natcan is a company not resident in Canada which operates in the reinsurance field and for which the appellant provides reinsurance for part of the risks it assumes in respect of customers obtaining mortgage loans. The services in question are administrative services which the appellant provides to Natcan and for which it claims input tax credits (ITC).

[3] It was admitted by both parties that the services provided are financial services within the meaning of the Act, the appellant is a financial institution and the services are for the benefit of a non-resident person. Accordingly, the appellant submitted that it met the criteria of section 1 of Part IX of Schedule VI, and therefore the services supplied were zero-rated services which entitled it to the ITC.

[4] It was an understatement on the part of the Tax Court of Canada when it said in paragraph 33 of its decision that the wording of the legislation in question was not crystal clear. Section 1 of Part IX of Schedule VI describes the financial service to which the provision applies, but at the outset provides for the first exception to the provision, namely services included in section 2. It then provides for a further series of exceptions, in which paragraph 1(e) itself contains an exception to the paragraph 1(e) exception. Where and how is one to find the guiding light that will enable to find an exit to what, in interpretive terms, is a real labyrinth?

[5] The appellant submitted that section 1 lays down as a principle that all financial services supplied by a financial institution to a non-resident person are zero-rated supplies, except for those mentioned in section 2 and those expressly listed in paragraphs (a) to (e) of section 1. Accordingly, in the appellant's submission, the supply of financial services associated with an insurance policy, except for those covered by section 2 which are also related to an insurance policy, is a zero-rated supply.

[6] The difficulty presented by the position taken by the appellant is twofold. First, the appellant admitted that, according to the interpretation which it gives to section 1, the financial services listed in section 2 are services already covered by section 1, and therefore are the supply of zero-rated services under section 1. Then why would Parliament exclude such supply from section 1 and make it a zero-rated supply of services under section 2, if it is already a zero-rated supply of services under section 1?

[7] Second, the effect of the appellant's position is to make section 2 pointless and entirely devoid of content. In enacting it, Parliament, which is never deemed to have spoken in vain, would in fact have spoken in vain since the supply of services in section 2 would already have been covered by section 1.

[8] The only way of understanding section 1 and giving it a coherent meaning consistent with the principles of taxation, zero-rating and exempt supplies contained in the Act is to see and recognize in section 1, in the exception of a supply of services contained in section 2, an intention

on the part of Parliament to deal in section 2 specifically and exhaustively with the financial services relating to an insurance policy. In other words, section 2 is a special and specific provision applicable to financial services relating to an insurance policy. In section 2, Parliament has defined the conditions under which the supply of such services will be zero-rated and only the supply of services which meet those conditions shall be so rated. Other supplies of financial services related to insurance policies are, pursuant to Part VII of Schedule V, entitled “Financial Services”, exempt supplies.

[9] One of the fundamental principles of legislative construction is that a statute or provision of a statute which deals specifically with a subject-matter must take priority over, and override, any general legislation or provision dealing with the same subject-matter. The rule is derived from the Latin maxim *generalia specialibus non derogant*. In her work entitled *Sullivan and Driedger on the Construction of Statutes*, 4<sup>th</sup> ed., Toronto, Butterworths, 2002, at p. 273, Prof. Sullivan states the following regarding this rule of construction:

When two provisions are in conflict and one of them deals specifically with the matter in question while the other is of more general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one. The specific prevails over the general; it does not matter which was enacted first.

[10] In *Vidéotron Ltée v. Industries Microlec*, [1992] 2 S.C.R. 1065, at page 1080, Gonthier J. observed that “[i]t is well settled that specific rules prevail over general rules”. In the case at bar, section 2 prevails over section 1 and the tax treatment of financial services relating to an insurance policy is governed by section 2.

[11] This interpretation of section 2 is also supported by section 3 of Part IX of Schedule VI, which deals with the supply of financial services involving the supply of precious metal. Here again, Parliament has adopted a specific provision on the question and only supplies which meet the requirements of that provision are zero-rated supplies.

[12] Finally, in my humble opinion, paragraph 1(e) of section 1 reinforces the interpretation I have arrived at regarding section 2.

[13] It will be recalled that paragraph 1(e) excludes a financial instrument from the supply of a section 1 financial service, except for an insurance policy or precious metal. The term “financial instrument” is broadly defined in section 123 of the Act as meaning, *inter alia*, a debt security, an equity security, an interest in a partnership or trust, an insurance policy, a precious metal and so on (emphasis added). Accordingly, therefore, an insurance policy and a precious metal have to be excluded from the definition of a financial instrument in paragraph 1(e), since Parliament has dealt specifically with them in sections 2 and 3. Otherwise, in view of the definition of a “financial instrument”, paragraph 1(e) would mean that a financial service relating to an insurance policy or precious metal could not be a zero-rated supply, which would be in conflict with sections 2 and 3, which expressly and specifically provide those that may be zero-rated and the conditions for such zero rating to apply.



[14] I note in passing that the English wording of sections 1 and 2 uses the phrase “other than” to exclude certain financial services from their scope. It seems to me that this phrase better achieves the result sought than the use, correct in French, of the words “à l’exception de”, used here in the sense of “à l’exclusion de”.

[15] The Tax Court of Canada correctly ruled that the supply of financial services in question was an exempt supply within the meaning of the Act creating no right to ITCs.

[16] For these reasons, I would dismiss the appeal with only one set of costs, but with entitlement to disbursements in each case.

“Gilles Létourneau”

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Judge

I concur.

Robert Décary J.A.

I concur.

J.D. Denis Pelletier J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:** A-352-05, A-353-05

**APPEAL FROM A DECISION BY JUDGE LUCIE LAMARRE OF THE TAX COURT OF CANADA OF JULY 7, 2005, CASE No. 2002-4863(GST)G.**

**STYLE OF CAUSE:** NATIONAL BANK LIFE INSURANCE, LIFE INSURANCE COMPANY v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 1, 2006

**REASONS FOR JUDGMENT BY:** Létourneau J.A.

**CONCURRED IN BY:** Décary J.A.  
Pelletier J.A.

**DATED:** May 3, 2006

**APPEARANCES:**

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