

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20101104

Docket: A-128-10

Citation: 2010 FCA 294

**CORAM: NOËL J.A.
PELLETIER J.A.
MAINVILLE J.A.**

Docket: A-128-10

BETWEEN:

ZALE CANADA DIAMOND SOURCING INC.

Appellant

and

**HER MAJESTY THE QUEEN
(MINISTER OF NATIONAL REVENUE)**

Respondent

Docket: A-127-10

BETWEEN:

MARILENA JEWELLERY IMPORT LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

Docket: A-129-10

BETWEEN:

KLASSEN JEWELLERS LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-130-10

BIRKS AND MAYORS INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-131-10

SAMUEL KLEINBERG JEWELLERY (CANADA) INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-132-10

ZALE CANADA CORPORATION

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-134-10

E.P. KAUFMANN & CO. INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN: **Docket: A-135-10**

M. EVANCHICK MANUFACTURING LTD.
Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)
Respondent

BETWEEN: **Docket: A-136-10**

BIJOUTERIE LAVIGUEUR LTÉE
Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)
Respondent

BETWEEN: **Docket: A-137-10**

COSTCO WHOLESALE CANADA LTD.
Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)
Respondent

BETWEEN: **Docket: A-138-10**

IBB INTERNATIONAL (CANADA) INC.
Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)
Respondent

BETWEEN: **Docket: A-139-10**

CHATEAU D'ARGENT INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN: **Docket: A-140-10**

139551 ONTARIO INC. (CARMELLA FINE JEWELLERY)

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN: **Docket: A-141-10**

3588718 CANADA INC. (EMPRESS JEWELLERY)

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN: **Docket: A-142-10**

LIBMAN MANUFACTURING LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-143-10

PM GEMS INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-144-10

GEMME CANADIENNE P.A. INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

Heard at Montréal, Quebec, on November 3, 2010.

Judgment delivered at Montréal, Quebec, on November 4, 2010.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

NOËL J.A.
PELLETIER J.A.

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20101104

Docket: A-128-10

Citation: 2010 FCA 294

**CORAM: NOËL J.A.
PELLETIER J.A.
MAINVILLE J.A.**

Docket: A-128-10

BETWEEN:

ZALE CANADA DIAMOND SOURCING INC.

Appellant

and

**HER MAJESTY THE QUEEN
(MINISTER OF NATIONAL REVENUE)**

Respondent

Docket: A-127-10

BETWEEN:

MARILENA JEWELLERY IMPORT LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

Docket: A-129-10

BETWEEN:

KLASSEN JEWELLERS LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-130-10

BIRKS AND MAYORS INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-131-10

SAMUEL KLEINBERG JEWELLERY (CANADA) INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-132-10

ZALE CANADA CORPORATION

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-134-10

E.P. KAUFMANN & CO. INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-135-10

M. EVANCHICK MANUFACTURING LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-136-10

BIJOUTERIE LAVIGUEUR LTÉE

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-137-10

COSTCO WHOLESALE CANADA LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-138-10

IBB INTERNATIONAL (CANADA) INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-139-10

CHATEAU D'ARGENT INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-140-10

139551 ONTARIO INC. (CARMELLA FINE JEWELLERY)

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-141-10

3588718 CANADA INC. (EMPRESS JEWELLERY)

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

BETWEEN:

Docket: A-142-10

LIBMAN MANUFACTURING LTD.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

Docket: A-143-10

BETWEEN:

PM GEMS INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

Docket: A-144-10

BETWEEN:

GEMME CANADIENNE P.A. INC.

Appellant

and

HER MAJESTY THE QUEEN (MINISTER OF NATIONAL REVENUE)

Respondent

REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] These are appeals from decisions of Beaudry J. of the Federal Court dismissing the actions brought by the appellants in a single set of reasons and on the basis that the *Act to Amend the Excise Tax Act (elimination of excise tax on jewellery)*, S.C. 2005, c. 55 (Bill C-259) did not eliminate the excise tax on jewellery.

[2] The appeals were consolidated by order of this Court rendered on May 7, 2010, the appeal in file A-128-10 being designated as the lead appeal. In conformity with this order, the reasons

which follow will be filed in the lead appeal and a copy thereof will be filed as Reasons for Judgment in the other appeals.

Background and context of the appeals

[3] Prior to February 24, 2005, section 5 of Schedule I of the *Excise Tax Act*, R.S.C. 1985, c. E-15, provided that the excise tax on jewellery was set at 10%.

[4] This section of the *Excise Tax Act* was replaced effective February 24, 2005 through the operation of sections 25 and 26 of the *Budget Implementation Act, 2005*, S.C. 2005, c. 30. This last act replaced section 5 of Schedule I of the *Excise Tax Act* with three new sections, 5, 5.1 and 5.2. The new section 5.2 set out a gradual reduction in the excise tax on jewellery over a four year period. The net effect of this amendment was to gradually reduce the excise tax on jewellery to 8%, 6%, 4% and 2% over a four year period, culminating in the elimination of this tax on jewellery as of March 1st, 2009.

[5] On November 25, 2005, Bill C-259 came into force. Though the title and preamble of Bill C-259 clearly set out its purpose as the elimination of the excise tax on jewellery, the substantive provisions of the act technically failed to do so. Indeed, the technical effect of Bill C-259 was to replace section 5 of Schedule I of the *Excise Tax Act* by a tax on clocks, but it did not affect the gradual reduction on the excise tax on jewellery set out by section 5.2 of that Schedule.

[6] A few months after the coming into force of Bill C-259, the *Budget Implementation Act, 2006*, S.C. 2006, c. 4 was introduced in Parliament and eventually adopted. Section 89 of the *Budget Implementation Act, 2006* repealed sections 5 to 5.2 of Schedule I of the *Excise Tax Act* with retroactive effect to May 2, 2006. One of the effects of this legislation was the elimination of the excise tax on jewellery as of that date.

[7] The appellants, Canadian jewellery manufacturers, seek a refund on excise taxes for the period from November 25, 2005, when Bill C-259 came into force, to May 1st, 2006, the day prior to the elimination of the excise tax on jewellery under the terms of the *Budget Implementation Act, 2006*. The appellants' position throughout has been that the clear and unambiguous intent of Bill C-259 was to eliminate the excise tax on jewellery as of November 25, 2006, and that this intent must prevail over the technical drafting of the substantive provisions of the legislation.

[8] Beaudry J. rejected the appellants' contentions. Though Beaudry J. agreed with the appellants "that the source of the error has been demonstrated to the Court and that there was some absurdity which flows from the application of the Act as written" (at para. 65 of his reasons), he was not convinced that the technical drafting of Bill C-259 was a simple clerical error since "the Act as drafted is not meaningless, contradictory or incoherent on its face" (at para. 62 of his reasons), nor could he "conclude with confidence that had Bill C-259 been properly understood and presented in its final stages, that it would indeed have been adopted to achieve the effect suggested by the [appellants]" (at para. 68 of his reasons).

[9] The appellants appeal to this Court on the basis that Beaudry J. erred in deciding that Bill C-259 cannot be interpreted as having eliminated the excise tax on jewellery as of its coming into force on November 25, 2005.

Analysis and decision

[10] While I recognize that there is an inherent contradiction between the title and the preamble of Bill C-259 and the technical drafting of the substantive provisions enacted pursuant to that Bill, I agree with Beaudry J. that this is not a mere clerical error. As drafted, Bill C-259 has a meaning which may not be the one stated in its preamble, but which nevertheless is coherent.

[11] The appellants are basically asking this Court to redraft the legislation through judicial fiat in order to meet the objectives which the appellants believe Parliament had when it adopted Bill C-259. I am of the view that it is not the role of the judiciary to carry out a substantial redraft of the legislation, nor to give the language of the substantive provisions of the legislation a meaning which it cannot bear (see by analogy *Exida.com Limited Liability Company v. The Queen*, 2010 FCA 159, 2010 D.T.C. 5101 at paras. 28 to 32, and *Stone v. Woodstock (Town)*, 2006 NBCA 71 at para. 21).

[12] It is the responsibility of Parliament to correct any substantive errors in the legislation it adopts if it deems proper to do so. In this case, I am of the view that any perceived contradictions between the title and preamble of Bill C-259 and its substantive provisions were addressed by Parliament in the *Budget Implementation Act, 2006* which repealed the excise tax on jewellery

effective as of May 2, 2006. Had Parliament intended to extend the repeal of this tax to November 25, 2005, the date of the coming into force of Bill C-259, it could have done so, but chose not to. The intent of Parliament is abundantly clear: the excise tax on jewellery is fully repealed as of May 2, 2006. Notwithstanding the appellants' assertions to the contrary, section 45 of the *Interpretation Act*, R.S.C. 1985, c. I-21 is not a bar to reaching such a conclusion: *Silicon Graphics Ltd. v. Canada*, 2002 FCA 260, [2003] 1 F.C. 447 at paras. 42-43.

[13] I would therefore dismiss the appeals with one set of costs.

“Robert M. Mainville”

J.A.

“I agree.

Marc Noël”

“I agree.

J.D. Denis Pelletier”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-128-10

STYLE OF CAUSE: ZALE CANADA DIAMOND
SOURCING INC. v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 3, 2010

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

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

DATED: November 4, 2010

APPEARANCES:

Peter Kirby FOR THE APPELLANTS

Charles Camirand FOR THE RESPONDENT
Christopher Kitchen

SOLICITORS OF RECORD:

Fasken Martineau DuMoulin SENCL FOR THE APPELLANTS
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada