

Citation: 2007TCC452  
Date: 20070830  
Docket: 2006-2066(IT)G

BETWEEN:

DELANE PATE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

(Delivered orally from the Bench  
at Toronto, Ontario on July 13, 2007)

#### **Mogan, D.J.**

[1] In the year 2000, the Appellant resided in Burlington, Ontario and was a senior officer of Laurel Steel Corporation. For the 2000 taxation year, the Appellant filed an income tax return in Canada reporting significant income in the range of \$700,000. The Appellant received a notice of original assessment for 2000 dated March 29, 2001. By notice of reassessment dated October 21, 2005, the Minister of National Revenue (the “Minister”) added \$498,131 to the Appellant’s reported income for 2000.

[2] The notice of reassessment was issued after the end of the normal reassessment period within the meaning of subsection 152(3.1) of the *Income Tax Act*, and it is commonly referred to as statute-barred. Because the reassessment is statute-barred, the Minister has the onus of proving that the Appellant made a misrepresentation attributable to neglect, carelessness or wilful default or committed a fraud in filing his return of income for the 2000 taxation year.

[3] Under the reassessment, the Appellant’s liability for income tax was increased by \$238,403. The Appellant was assessed a penalty of \$119,201 and interest of \$137,799. The Appellant has appealed to this Court from the

reassessment. Counsel for the Respondent accepted the onus of proof and called the Appellant as his first witness. What follows is a summary of the Appellant's testimony.

[4] The Appellant retired around 2004 or 2005 but, prior to that time, had been in the steel business for 35 years. Laurel Steel produced cold finished steel bars, wire mesh and similar finished steel products. Every second year, in April or May, there was a trade show in Germany for companies engaged in making steel products like the products made by Laurel Steel. In 2000, the Appellant had been attending this trade show for 20 years and, therefore, had been to Germany at least ten times. Through these trade shows, the Appellant had met Terry Paraskevas, the founder of a small private German corporation identified as EJP which manufactured equipment used to make cold steel products.

[5] The Appellant and Terry Paraskevas had become good friends, and the Appellant had entertained Mr. Paraskevas at his home in Oakville, Ontario sometime in the early 1990s. In 1999 or 2000, Terry Paraskevas had asked the Appellant if he could use the Appellant's name as a conduit to transfer certain money to a man in China. Mr. Paraskevas said that he needed the Appellant's name to open a bank account in Luxembourg to receive and transmit the funds. The Appellant asked his accountant in Hamilton, Ontario if funds received like this in Europe could be disclosed to his employer, Laurel Steel, or to the Canada Revenue authorities. Whatever answer the Appellant received, he must have felt comforted because he gave Terry Paraskevas permission to use his name and gave him a power of attorney to open a bank account at Banque Baumann in Luxembourg.

[6] Terry Paraskevas opened an account at Banque Baumann using the Appellant's name, "Lane Pate", as he was known to family and friends, his first name being abbreviated from DeLane. The Appellant's address given to Banque Baumann was 100 Bronte Road, Philipsburg, St. Maarten, Netherlands Antilles. The Appellant admitted in oral testimony that this was a false address. In 2000, he no longer resided at 100 Bronte Road, but it is the street address where he had resided in Oakville, Ontario in the early 1990s. Also the Philipsburg, St. Maarten, Netherlands Antilles part of the address was used because he had once visited the Netherlands Antilles with his wife, and they had considered buying a timeshare unit there. In any event, Banque Baumann did not have an accurate address for the account opened in the name of Lane Pate. Needless to say, the Appellant did not receive any correspondence from Banque Baumann.

[7] The Appellant felt uneasy about the Luxembourg bank account, but he had total confidence in the integrity of Terry Paraskevas, and so he let the matter go. He described Mr. Paraskevas as a straight-up guy, one he could trust. The Appellant also knew Jacques Paraskevas, the son of Terry. Jacques Paraskevas testified at the hearing, and I will refer below to his evidence. Here, I will simply state that Jacques Paraskevas described himself and his father as co-managing directors of EJP Maschinen GmbH, a small family corporation carrying on business in Germany.

[8] In March 2000, Jacques Paraskevas prepared an invoice from the Appellant to EJP charging a commission of \$254,250 with respect to a sale to Niagara Steel Buffalo, as it was named in the invoice. That invoice is Exhibit R-1, Tab 1. Jacques Paraskevas faxed a copy of the invoice to the Appellant. The invoice, dated March 6, 2000, ends with the typed word “regards”. The Appellant gave Jacques Paraskevas permission to write his, the Appellant’s, name under the word “regards” like a signature.

[9] In April 2000, the Appellant was in Germany attending the wire screen trade show. At the request of Jacques Paraskevas, the Appellant and his wife drove with Mr. Paraskevas to Luxembourg, about a two-hour drive from the trade show, and went to Banque Baumann. The date was April 26, 2000. Again, at Jacques Paraskevas’ request, the Appellant withdrew all the money in the account in cash (deutschmarks) and handed it to Mr. Paraskevas. Exhibit A-1 is a Banque Baumann document showing a deposit of 214,888 euros from EJP Maschinen GmbH on March 31, 2000 to the Appellant’s account No. 16. The Appellant recognized the bank document as being for his account because the word “Noah” appears on the form. Noah is the name of the Appellant’s grandson, and he had given that name to Terry Paraskevas to be used as a bank password for identification to his account.

[10] Exhibit A-2 is also a Banque Baumann document showing the withdrawal of all cash in the amount of 380,570 on April 26, 2000, but it is not clear to me whether the currency is euros or deutschmarks. In any event, this is the cash which the Appellant claims that he handed to Jacques Paraskevas while in Banque Baumann or outside on the street.

[11] They then drove to another bank in Luxembourg which the Appellant recalls as a branch of HSBC, a large worldwide bank. The Appellant stated that Jacques Paraskevas went into the second bank and was there for many minutes. While

waiting for Jacques Paraskevas, the Appellant and his wife got out of the car and went for a short walk in that particular area of Luxembourg. It is the Appellant's understanding that Mr. Paraskevas was somehow transferring the cash which the Appellant had handed to him to the account of the unnamed recipient in China. When Jacques Paraskevas emerged from the second bank, the three persons drove back to the trade show in Germany.

[12] Continuing with the summary of the Appellant's evidence, in November 2000 Jacques Paraskevas prepared a second invoice from the Appellant to EJP Maschinen GmbH in the amount of 190,933 deutschmarks. That invoice dated November 28, 2000 is Exhibit R-1, Tab 2, showing commissions for sales to three corporations identified as Carpenter, Nucor and Niagara. Jacques Paraskevas faxed a copy of the invoice to the Appellant, and he again asked permission to write the Appellant's name like a signature under the word "regards". The Appellant gave his permission.

[13] In May 2002, the Appellant and his wife were again in Germany attending the wire screen trade show. On May 16, 2002, Jacques Paraskevas asked the Appellant to drive to Luxembourg to go to the bank. The Appellant and his wife accompanied Mr. Paraskevas to Luxembourg. Exhibit A-3 is a document from VP Bank showing a deposit on March 28, 2002 of 97,582 euros to the Appellant's account. Apparently, VP Bank had purchased and integrated with Banque Baumann after 2000, and the Appellant's former account was now with VP Bank.

[14] Exhibit A-4 is a VP Bank document showing a withdrawal of 185,499.67 euros from the Appellant's account on May 16, 2002. The Appellant admits that he withdrew that amount of cash on May 16, 2002. The Appellant claims, however, that he handed all of the cash to Mr. Paraskevas as he had done two years earlier. He stated that they walked out of the bank and Mr. Paraskevas asked him to wait a brief time. The Appellant observed Jacques Paraskevas walk across the street and speak with a person who appeared to be a Chinese gentleman. He watched Jacques Paraskevas hand the container of cash to the Chinese gentleman and then come back across the street to join the Appellant. They then walked a short distance to Mr. Paraskevas' car to join the Appellant's wife and the three of them drove back to the trade show.

[15] Exhibit R-1, Tab 3, is a handwritten document called "Confirmation". It is short and so I will read it into the record. It is all on one page.

Confirmation: I herewith confirm to have received the following payments on my personal account at Bank Baumann Luxembourg.

March 6, 2000, 420,285 deutschmarks received March 2000.

November 28, 2000, 190,933.35 deutschmarks received November 2000.

Best regards Lane Pate.

The Appellant admits that this document is in his handwriting. He states that he wrote it around 2003 or 2004 at the request of Jacques Paraskevas, and he believes that EJP needed the confirmation to satisfy the German tax authorities that the disbursements to Banque Bauman were for the business purposes of EJP.

[16] That concludes my summary of Mr. Pate's evidence, but I will come back to refer to issues concerning the credibility of that evidence and its relation to other evidence.

[17] Mr. Sood called as a second witness Mr. D'Ippolito, the Revenue Canada auditor who got in touch with Mr. Pate in the summer of 2005, and who ultimately issued the reassessment which is under appeal. I will defer, however, my summary of Mr. D'Ippolito's evidence and deal with it later. Those were the two witnesses called by the Respondent to discharge the onus on the Minister of proving that the Minister was entitled to issue the reassessment under appeal.

[18] Counsel for the Appellant called Jacques Paraskevas as his first witness and a Mr. Liang from Shanghai, China as his second witness. It is now my purpose to summarize the evidence given by those two witnesses for the Appellant.

[19] Jacques Paraskevas corroborated important parts of the Appellant's testimony. He stated that his father had asked the Appellant for the use of his name to open an account at the bank in Luxembourg. He explained his involvement in the transaction by stating that he was then assisting his father as co-managing director of EJP, and his father had transferred to him the responsibility of seeing through these transactions with Mr. Pate and the gentleman from Shanghai (Mr. Liang). With regard to the evidence that I have summarized from Mr. Pate, Mr. Paraskevas confirmed the substance of it. In particular, Mr. Paraskevas said that he prepared the two invoices I referred to as Tab 1 and Tab 2 in Exhibit R-1.

[20] Mr. Pate had been closely cross-examined on those invoices as to whether they might have been prepared by him, and not by Mr. Paraskevas, because there

are certain, what appear to be, spelling errors that a person not familiar with the German language would make and which a person familiar with the German language would not make. Mr. Paraskevas was consistent in holding to his position that he had actually prepared those invoices and asked Mr. Pate, the Appellant, for permission to write his name. He also acknowledged that he had asked the Appellant to sign the confirmation, which is Exhibit R-1, Tab 3, and admitted that the confirmation was probably for German tax purposes.

[21] Jacques Paraskevas confirmed the two trips to the Luxembourg bank: that he had taken the cash on the first occasion and gone to a second bank for the purpose of transferring it to the gentleman in Shanghai; and that, on the second occasion, he had actually handed the cash to Mr. Liang in Luxembourg. What is difficult to understand in this case is the terms on which the money was paid to the recipient in China, if it was paid to him, and the consideration given for it.

[22] According to the evidence of Mr. Paraskevas, and this was later confirmed by the evidence of Mr. Liang, Mr. Liang was able to provide valuable services to EJP by providing to EJP (i) the names of prospective customers in the United States; (ii) the kind of products those customers might need; and (iii) the prices quoted to those prospective customers by a corporation in Italy (Danieli) which appears to be a significant competitor of EJP. Therefore, the commissions in question are said to have been earned by Mr. Liang.

[23] I will now put together the evidence of both Mr. Paraskevas and Mr. Liang in terms of what their relationship was, and I briefly set aside the evidence of Mr. Pate as to his involvement in their transaction.

[24] Mr. Liang said that he called Terry Paraskevas around 1999 or early 2000 to tell him that because of the type of work he was doing -- - at that time Mr. Liang worked for a company called Noblewell which was a trading corporation in steel products apparently in Shanghai - - he may be able to help him to secure additional sales. Terry Paraskevas went to China sometime in the period 1999 or 2000 and met Mr. Liang in Beijing at a bar. They entered into a business discussion the substance of which was that Mr. Liang would become an agent residing in China to secure or help to secure sales or other information that would facilitate and enhance the business of EJP. Mr. Liang said they agreed that there would be a seven-and-one-half percent commission payable to him on any business he secured for EJP and that it had to be paid in cash.

[25] Mr. Liang could not be paid in any way that would leave a paper trail because if his employer, Noblewell, found out that he was effecting sales on the side and earning commission, he would lose his job. Therefore, he was insistent that there be no documentation recording the arrangement between him and EJP and that any consideration to be paid by EJP must be in the form of cash.

[26] Apparently, Terry Paraskevas accepted those terms because, although there was no direct evidence on this point, that would be the cause of his coming back to Germany and calling the Appellant to ask if he could use the Appellant's name to transmit funds to a gentleman in Shanghai. That part of the story (the agreement between Terry Paraskevas and Mr. Liang) is consistent with the evidence of both Mr. Liang and Jacques Paraskevas. Also, that part of the story is believable, but the terms (described by Jacques Paraskevas and Mr. Liang) on which this money was paid by EJP to Mr. Liang are not believable.

[27] What these two witnesses (Paraskevas and Liang) are asking the Court to accept is the fact that a man in Shanghai who speaks limited English could earn commissions on sales by a German company to North American customers. Mr. Liang testified mainly through a Mandarin interpreter and, although he does have some English (enough to speak on the telephone to Germany), his English was so limited that counsel for the Appellant who called him as a witness frequently asked him to answer in Mandarin so that the answer would be more comprehensible and more complete. Mr. Liang followed that advice when so given by counsel for the Appellant.

[28] One of the problems in this case is that, watching the evidence go in, I concluded that there is a mixture of fact and fiction. It is not believable to me that Mr. Liang secured sales from EJP to the three American corporations which were later identified as (i) Niagara-La Salle in Buffalo, New York; (ii) Carpenter Technology Corporation in Redding, Pennsylvania; and (iii) Nucor Cold Finish in Norfolk, Nebraska. Mr. Liang stated that he was able to find out what those corporations' needs were in terms of equipment that EJP might manufacture and sell. He was able to obtain the specifications for that equipment. He was able to obtain the price being quoted by at least one significant competitor of EJP so that EJP could not only make a machine to the required specifications but also match the price of a competitor.

[29] Mr. Liang was closely cross-examined by Mr. Sood in this area as to how he could on the telephone transmit technical information to either Terry Paraskevas or his son, Jacques Paraskevas, or anyone else in Germany acting on behalf of EJP.

Accepting Mr. Liang's limited use of the English language, how could any person at EJP receive information from him in a manner that would permit EJP to quote on machinery to sell to three corporations in the United States, two of them in the Eastern United States and one in the Midwest, and permit Mr. Liang to earn commissions in the amount of \$498,000? Throughout 1999, 2000 and 2001, Mr. Liang resided in China.

[30] Frankly, I disbelieve that part of the testimony. I do not believe that the money went to Mr. Liang for that purpose, but that is not the crux of this appeal. The crux of this appeal is whether the money went to Mr. Liang at all, or did it remain in the hands of Mr. Pate.

[31] Mr. Pate is in peril in this case because he admits to falsifying documents to permit the opening of a bank account in his name in Luxembourg. He admits going to the bank on two occasions and withdrawing significant amounts of cash which have a Canadian equivalent value of \$498,000. He claims that simultaneously with the withdrawals, he handed the cash to his friend Jacques Paraskevas so that he (Paraskevas) could then complete the transfer of the money to a person who, at that time, was unknown to the Appellant and simply identified as a gentleman in Shanghai.

[32] I will deal briefly with the evidence of the auditor from Revenue Canada later but, looking at the evidence of the three persons most intimately involved with the cash: (i) the evidence of Jacques Paraskevas who was the original source of the funds; (ii) the evidence of the Appellant who received the funds directly from EJP; and (iii) the evidence of Mr. Liang who admits that, at the end of the day, he received the funds, I find that the Appellant's evidence on balance has a true ring. Here are my reasons for that finding.

[33] In the year 2000, he had been in the steel business for about 30 years. He knew everybody in this related steel business in North America. There were names put to him by Mr. Sood who were employed by either Niagara-La Salle or Nucor or Carpenter Technologies. Mr. Pate admitted that he knew those people. They were in the same industry. He had once worked for Nucor at a senior position, a managerial position. As in many businesses, the people who manufacture in a particular community all know each other. They are competitors in one way but they also cooperate in technological matters in another way.

[34] I find it difficult to believe that a man who was earning salary and bonus income in the range of \$700,000 in the year 2000, and had what appears to be an



unblemished record in the steel industry, would put his reputation at risk in the twilight of his career by starting to do agency deals for a German manufacturer to earn commissions by facilitating the sale of the German equipment to people in the same industry in North America.

[35] If he made contact with those companies, like Niagara-La Salle, Carpenter Technologies and Nucor, his former employer, they would know, if not directly, they would surmise that he had a hand in facilitating a sale of German products to them; and they would suspect that he was getting a secret commission or an under-the-table payment. His whole reputation would be at risk. There is, of course, human greed; and some people who have a lot of money want more, but I observed closely the demeanour of Mr. Pate in the witness box. He was under intense cross-examination by Mr. Sood, but he did not waver.

[36] He acknowledged the deceitful documents he had either signed or been party to but, at the end of the day, he stuck to his story that, on those two occasions, he went to Luxembourg; he withdrew the cash; he handed it to Jacques Paraskevas; and he never saw it again. As I have already stated, the Appellant's evidence has a true ring to it.

[37] The evidence of Jacques Paraskevas also has a true ring, in part, in the sense that I believe he went to the bank in Luxembourg with the Appellant; he received the cash; and he passed it on to Mr. Liang. I do not accept the other part of his testimony which purports to explain the reason for giving the money to Mr. Liang. I am satisfied that Mr. Liang ended up with the money but not for the reasons given by Jacques Paraskevas.

[38] As for Mr. Liang's testimony, I accept the parallel provisions of the evidence of Jacques Paraskevas. I believe that Mr. Liang got the money. I do not believe that he received it for the reason he said. As I have already indicated, it is not believable to me that a man in the position of Mr. Liang who lives in Shanghai could earn commissions on sales to three American steel businesses when he never travelled to the USA.

[39] For whatever reason, perhaps with the expanding market in China, I am convinced that EJP had good reason to get the money in question into the hands of Mr. Liang as compensation for a valuable service rendered to EJP by Mr. Liang, but the only evidence which gives this appeal a colour of deceit is the purported reasons given for paying that money. I think it was for some other consideration.

[40] I do not have to get into that area, however, because the reasons for EJP paying cash to Mr. Liang are not relevant in deciding this case. The only relevant fact is whether the cash ended up in the hands of the Appellant or somebody else. On balance, I am satisfied that the Appellant was only a conduit. Considering all of the evidence, I conclude that the Appellant did not retain the money in question.

[41] There were certain overtones to the oral evidence that are corroborative unintentionally, of the Appellant's story. I will refer to two of them specifically. First, Mr. Sood called Mr. D'Ippolito (a Revenue Canada assessor) as his second witness, and he explained how he was given the Appellant's file. Apparently, the German tax authorities sent a communication to the Canadian tax authorities saying: "You might want to question Mr. Lane Pate about large amounts of money he appears to have received from a German company by way of deposit in a Luxembourg bank". That is the kind of information that frequently is passed between two countries because, under most tax treaties, there is an obligation to share that kind of information.

[42] Mr. D'Ippolito stated that he received the file in the late spring of 2005; he started to track down the Appellant; and ended up calling him at his home in Palm Desert, California. The evidence of Mr. D'Ippolito and the Appellant is consistent on this phone call in July 2005. Mr. D'Ippolito said that when he finally got Mr. Pate on the phone, he was cautious about asking him certain questions about possible transactions in Europe; and Mr. Pate was cautious about answering. Mr. D'Ippolito finally had to be more specific and said: "Well, I am calling you about an account you had in Luxembourg", or words to that effect. As soon as that specific fact came out, Mr. D'Ippolito quoted the Appellant as saying: "I know who set me up".

[43] That is a kind of throw-away line, but it is also an impulsive reaction like: "Oh-oh, I did a favour and now I'm on the hook". I look on the Appellant's impulsive response as corroborative of his favour to Terry Paraskevas, and not as an admission of guilt like "Now I'm caught".

[44] At the end of their phone conversation, the Appellant said to Mr. D'Ippolito: "If you want information, send me a letter". Exhibit R-1, Tab 4, is the letter from Mr. D'Ippolito to the Appellant on July 11, 2005 (the same day as the phone conversation) asking for information. That letter was referred to in the evidence of Mr. D'Ippolito in which he specifically mentions \$611,218 deutschmarks deposited into a foreign financial institution, such as Banque Baumann in Luxembourg, and he asks: "What about it?". Exhibit R-1, Tab 5, is the Appellant's reply to Mr. D'Ippolito's letter.

[45] The Appellant's reply is partly true. Whether it is all true or not, I do not have to decide but he stated that, as a favour to EJP Maschinen GmbH, Germany, he received from EJP into an account at Banque Baumann in Luxembourg certain money. The letter then proceeded:

I then forwarded these amounts to Mr. Liang (see attached confirmation).  
At the time Mr. Liang had a conflict of interest to receive these funds directly from EJP. Shortly after this event that was no longer the case.

[46] There are certain statements in the Appellant's reply (ExhibitR-1, Tab 5) which are clearly not true. He says he received the money in 2000 but, on his own evidence and the evidence of Mr. Paraskevas, he did not. He received the two amounts two years apart. He also explains that the foreign mailing address was used as initially another bank account in Antilles was foreseen. That is really not true. I have already explained how he came to use that address. But from there on, his explanation is consistent with his sworn and believable testimony that he did not retain the money.

[47] The other overtone of corroboration in oral testimony which struck a truthful cord with me was in the cross-examination of Jacques Paraskevas. He was having to admit that he and his father had to set up this non-documented, totally-oral arrangement with Mr. Liang which provided for the payment of significant amounts of money to Liang in circumstances which are not in the normal course of business. When he was being pressed by Mr. Sood as to why he would set up such an arrangement and why he would come to Canada and testify at his own expense, he stated at one point: "I came here to right a wrong". He said he received no compensation for testifying, and he came to Canada for this trial at his own expense.

[48] For me, this impulsive reaction by Jacques Paraskevas under cross-examination is consistent with the Appellant's agreement to let Terry Paraskevas use his name. A successful businessman like the Appellant would not let a stranger use his name to open a bank account in Luxembourg unless there was total trust in the person given the power of attorney to open the bank account. You have to really trust a third party to do such a thing. I conclude that that trust existed between the Appellant and Terry Paraskevas, and I think that trust was transferred to the younger Jacques Paraskevas.

[49] I conclude that when Messrs. Paraskevas (father and son) realized that by asking the Appellant to do them this favour (they have a significant interest in advancing their relationship with Mr. Liang in China), they later saw the trouble that

their friend got into in Canada where the assessments of additional tax and penalty and interest are almost equal to the amount that has been added to his income, I have no doubt that they felt a sense of duty or honour to come to Canada and do what they could to explain in this Court the circumstances; and to confirm that the Appellant did not get the money. I believe the most relevant parts of the oral testimony of Jacques Paraskevas.

[50] On that basis, I will allow the appeal totally with costs to the Appellant.

[51] I would add this in closing. This is an appeal that had to come to trial. In other words, I think Revenue Canada cannot be criticized for the reassessment. All of the documentation available to Revenue Canada puts the money in the hands of the Appellant. Indeed, on his own evidence, he had the cash right in his hands standing in a bank in Luxembourg.

[52] As Mr. Sood argued, all the documents lead to that conclusion; and it is only if one hears and accepts the oral testimony that the door may be open for the Appellant to walk out from under the assessment. Because the reassessment is statute-barred, the onus of proving that the reassessment may be made under subsection 152(4) of the *Act* is on the Minister.

[53] Listening to the oral testimony of all four witnesses, I have come to the conclusion that, on a balance of probabilities, Mr. Pate did not retain this money for his own account and benefit. Although I have serious misgivings, as I have indicated, about certain evidence given collateral to the primary issue as to whether the Appellant retained the money, those misgivings do not affect my finding that the oral testimony of the Appellant and Jacques Paraskevas is believable and believed on the primary issue.

[54] For those reasons, the appeals will be allowed. I will issue my judgment probably in two or three weeks when I have had an opportunity to review and edit and amplify, if necessary, the reasons given this morning.

Signed at Ottawa, Canada this 30th day of August, 2007.

“M.A. Mogan”

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Mogan, D.J.

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APPEARANCES:

Counsel for the Appellant: David C. Nathanson, Q.C. and John Sorensen  
Counsel for the Respondent: Bobby Sood

COUNSEL OF RECORD:

For the Appellant:

Name: David C. Nathanson, Q.C.

Firm: Lerners  
Toronto, Ontario

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada