

Docket: 2012-2524(IT)G

BETWEEN:

AGNICO-EAGLE MINES LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on May 12 - 14, 2014 at Toronto, Ontario

Before: The Honourable Justice Judith Woods

Appearances:

Counsel for the Appellant: Brian R. Carr  
Gerald Grenon  
Christopher Sheridan

Counsel for the Respondent: Arnold H. Bornstein  
Louis L'Heureux

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 2005 and 2006 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that foreign exchange gains were not realized on conversions of the appellant's convertible debentures.

Costs are awarded to the appellant.

Signed at Ottawa, Ontario this 4<sup>th</sup> day of November 2014.

“J.M. Woods”

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Woods J.

Citation: 2014 TCC 324  
Date: 20141104  
Docket: 2012-2524(IT)G

BETWEEN:

AGNICO-EAGLE MINES LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Woods J.

#### I. Introduction

[1] Agnico-Eagle Mines Limited (“Agnico”), a taxable Canadian corporation, issued US-denominated convertible debentures in 2002 at an aggregate price of US \$143,750,000. This appeal raises an interesting question as to whether Agnico realized foreign exchange gains when the convertible debentures were converted and redeemed for Agnico’s common shares.

[2] Agnico was assessed for the 2005 and 2006 taxation years on the basis that it realized deemed capital gains in the amounts of \$4,499,360 and \$57,676,430, respectively, pursuant to subsection 39(2) of the *Income Tax Act*. Agnico appeals from these assessments and submits that no foreign exchange gains were realized.

[3] The essence of the Crown's position is that foreign exchange gains were realized because the conversions and redemption resulted in a repayment of the debt equal to its US dollar principal amount which had decreased when translated to Canadian dollars (Respondent's Submissions, para. 35).

[4] Due to fluctuations in currency, the principal amount expressed in Canadian dollars decreased by approximately 40 percent at the time of the conversions and the redemption, from approximately Cdn \$1,588 to Cdn \$1,150 per convertible debenture.

[5] Agnico, on the other hand, suggests that the principal amount of the debt became irrelevant once holders exercised their rights of conversion, as most of them did. It submits that a gain could not have been realized because it borrowed far less than it paid out in Canadian dollar terms (i.e., \$228,289,375 borrowed and \$280,987,312 paid out, measured by the value of common shares issued to holders).

[6] As far as I am aware, this is the first time that a Canadian court has considered this issue.

[7] For the reasons below, the conclusion that I have reached is that a foreign exchange gain was realized only with respect to the redemption, and not with respect to the conversions.

[8] In these reasons, dollar amounts are in Canadian dollars unless otherwise noted.

## II. Background facts

[9] The facts below are based mainly on a Partial Agreed Statement of Facts (ASF).

[10] Agnico is in the business of producing gold and has operations in several countries. It is a public corporation governed by the *Business Corporations Act* (Ontario), and at the relevant time its common shares ("Common Shares") were listed on the New York Stock Exchange (NYSE) and the Toronto Stock Exchange (TSX).

### *Terms of Convertible Debentures*

[11] On or around February 15, 2002, 143,750 convertible subordinated debentures (“Convertible Debentures”) of Agnico were acquired by investors pursuant to a prospectus at a price of US \$1,000 each. The Convertible Debentures traded on the TSX.

[12] The terms of the Convertible Debentures were set out in an Indenture between Agnico and Computershare Trust Company of Canada, which provided as follows:

- (a) the annual interest rate was 4.50 percent;
- (b) the principal amount was US \$1,000, which was payable at maturity on February 15, 2012;
- (c) each Convertible Debenture was redeemable at the option of Agnico on or after February 15, 2006 for a redemption price (“Redemption Price”) equal to the principal amount plus accrued and unpaid interest. Agnico had the option of delivering Common Shares on redemption instead of cash; and
- (d) each Convertible Debenture was convertible at the option of a holder into 71.429 Common Shares at any time prior to redemption or maturity. In the event that a notice of redemption was issued by Agnico, the conversion right could be exercised up to the date of redemption.

[13] Based on the conversion rate of 71.429 Common Shares for each Convertible Debenture, the Common Shares would need a value of US \$14.00 in order for a holder to receive the equivalent of US \$1,000 on a conversion. Upon issuance of the Convertible Debentures, the Common Shares were trading on the NYSE at approximately US \$12.68.

[14] For simplicity, the TSX trading price of the Common Shares is not referred to in these reasons. As far as I can determine, nothing turns on this in this appeal.

[15] The Convertible Debentures were on account of capital to Agnico.

*Details of conversions*

[16] Of the 143,750 Convertible Debentures that were originally issued in 2002, 142,639 were converted into Common Shares during 2005 and 2006. Most of the conversions took place after Agnico issued a notice of redemption late in 2005.

[17] At the conversion dates, the Common Shares traded on the NYSE at prices that varied between US \$14.63 and US \$24.15. Since a trading price of US \$14.00 would give a converting holder the equivalent of US \$1,000 per Convertible Debenture, all converting holders received Common Shares with an aggregate trading price greater than the principal amount of the debt.

*Details of the redemption*

[18] On December 20, 2005, Agnico gave notice that it would redeem all outstanding Convertible Debentures on February 15, 2006, which was the earliest date possible under the Indenture. Agnico had the option to redeem the Convertible Debentures for Common Shares, which it exercised.

[19] The redemption price payable on redemption was equal to the principal amount of the debt plus accrued but unpaid interest (the "Redemption Price"). The unpaid interest at the time of the redemption was US \$22.68, and therefore the Redemption Price was US \$1,022.68.

[20] A notice of redemption sent to holders informed them that any Convertible Debentures outstanding on February 15, 2006 would be redeemed for 63.4767 Common Shares per Convertible Debenture. The number of shares was determined in accordance with a formula in the Indenture.

[21] Since a greater number of Common Shares would be issued on conversion than the redemption (71.429 versus 63.4767), most holders exercised their right to convert after receiving the notice of redemption.

[22] The value of the Common Shares as determined by the redemption formula was US \$16.58. On the date of redemption, the Common Shares actually closed trading on the NYSE at US \$23.92.

*Relevant currency translation*

[23] The foreign exchange rates applicable at dates relevant to this appeal are:

- (a) at the date of issuance of the Convertible Debentures, one US dollar was exchangeable for 1.5881 Canadian dollars;
- (b) at the conversion dates, one US dollar was exchangeable for Canadian dollars which varied from 1.1443 to 1.1726; and
- (c) at the redemption date, one US dollar was exchangeable for 1.1541 Canadian dollars.

[24] The aggregate principal amount of the Convertible Debentures expressed in Cdn dollars at the date of issuance was \$228,289,375.

[25] In 2005, 10,855 Convertible Debentures were converted. Expressed in Cdn dollars at the time of issuance, the Convertible Debentures were issued for an aggregate of \$17,238,825. Expressed in Cdn currency at the time of the conversions, the Common Shares issued on the conversions had an aggregate trading price of approximately \$17,010,810. (In these reasons, cash for fractional shares is ignored.)

[26] In 2006, 131,784 Convertible Debentures were converted. Expressed in Cdn dollars at the time of issuance, they were issued for an aggregate of \$209,286,170. Expressed in Cdn dollars at the time of the conversions, the Common Shares issued on the conversions had an aggregate trading price of approximately \$262,029,722.

[27] In 2006, 1,111 Convertible Debentures were redeemed. Expressed in Cdn dollars at the time of issuance, they were issued for an aggregate of \$1,764,379. Expressed in Cdn dollars at the time of the redemption, the Common Shares issued on the redemption had an aggregate trading price of approximately \$1,946,780.

#### *Accounting treatment*

[28] Both parties took the view that the accounting treatment of the transactions was not relevant to the appeal. Accordingly, no specific accounting evidence was introduced.

#### *Stated capital account*

[29] Agnico maintains an account for purposes of the stated capital provisions of the *Business Corporations Act* (Ontario), which is expressed in Canadian dollars.

[30] The following resolution was passed by Agnico's board of directors on January 31, 2002 with respect to the Common Shares issuable under the Convertible Debentures:

11. it is hereby determined that the aggregate consideration for the issue from time to time of each common share of the Company issuable upon the conversion, redemption or maturity of the Debentures or other common shares that may be issued pursuant to the terms of the Indenture (the "Underlying Common Shares") shall be as described in and on the terms provided for under the Indenture (the "Consideration") and that the fair value of the Consideration is not less than the amount of money that the Company would have received if the Underlying Common Shares had been issued for money;

[31] The board of directors did not pass any resolution adding a specific dollar amount to stated capital with respect to the issuance of Common Shares on conversion or redemption. Neither party suggested that this affected the validity of the shares.

[32] At the hearing, Agnico sought to introduce expert evidence regarding the appropriate addition to a corporation's stated capital account on the conversion of debentures into shares. Agnico submitted that the expert's report is admissible since it relates to commercial practice rather than domestic law.

[33] The relevance of the expert opinion is questionable, but in any event I concluded that the expert report should be excluded on the basis that the fundamental nature of the report was an opinion on domestic law as to the requirements concerning stated capital accounts in the *Business Corporations Act* (Ontario). It is well established that an expert opinion on domestic law is not admissible.

#### *Income tax assessments*

[34] Agnico was assessed on the basis that it realized deemed capital gains on conversions and the redemption pursuant to s. 39(2) of the *Act*. The amounts assessed are the same as if the principal amount had been repaid in cash.

[35] The Minister determined the gains by applying approximate rates of exchange to the principal amount of the debt on the date of issuance and on the



dates the Convertible Debentures were extinguished by conversions and the redemption. This resulted in assessments of deemed capital gains in the amounts of \$4,499,360 and \$57,676,430 for the 2005 and 2006 taxation years, respectively.

### III. Positions of parties

[36] The position of the Crown is reproduced below from the Amended Reply.

33. The appellant's liability in respect of the convertible debentures decreased by virtue of a fluctuation in the value of the US dollar relative to the Canadian dollar, between their issuance and conversions or redemptions. That liability decreased by CDN \$4,499,360 with respect to the convertible debentures converted in 2005 and by CDN \$57,676,430 with respect to the convertible debentures converted or redeemed in 2006.

34. As a result of the fluctuation in the value of the US dollar relative to the Canadian dollar, the appellant was able to discharge, on the conversions and redemptions of the convertible debentures, its initial liability of CDN \$17,238,826 for CDN \$12,739,466 with respect to its 2005 taxation year and its initial liability of CDN \$211,050,550 for CDN \$153,374,120 with respect to its 2006 taxation year.

35. As a result, by virtue of the fluctuation in the value of the US dollar relative to Canadian currency, the appellant realized capital gains of \$4,499,360 and \$57,676,430 for its 2005 and 2006 taxation years, respectively.

36. Subsection 51(1) of the Act has no impact on the capital gains realized by the appellant. This subsection applies only to the debenture holder whose debenture is converted or redeemed for shares of a corporation.

[37] The position of Agnico is reproduced from the Further Amended Notice of Appeal.

43. The Appellant could not realize a capital gain in either of its 2005 or 2006 taxation years pursuant to subsection 39(2) as a result of the 2005 and 2006 Conversions for the following reasons:

- (i) Subsection 39(2) had no application to the 2005 and 2006 Conversions. The Appellant did not redeem the Convertible Debentures that were converted on either the 2005 or 2006 Conversions. The Convertible Debentures represented a subscription price for those Common Shares that were issued on the conversions. On the conversions of the Convertible Debentures, the Appellant accepted the subscription price for the

Common Shares into which the Convertible Debentures were converted;

- (ii) Pursuant to subsection 261(2), the amount the Appellant received for the Common shares was fixed in 2002 and did not vary by virtue of any fluctuations in the exchange rate for \$US and \$CDN after that time. The Appellant received no further amounts in its 2005 and 2006 taxation years in which the Minister alleges the Appellant realized substantial gains;
- (iii) The fair market value of the Common shares issued on the conversions of the Convertible Debentures was in excess of the Principal Amount of the Convertible Debentures converted during the years in issue;
- (iv) The Appellant received \$CDN 17,238,825 for the issuance of the Convertible Debentures that were converted into Common Shares in 2005 and \$CDN 209,286,170 for the issuance of the Convertible Debentures that were converted into Common Shares in 2006. The stated capital of the Common Shares was increased by each of these amounts; and
- (v) Subsection 51(1) provides that on a conversion of the Convertible Debentures, there is no acquisition or disposition of property; as a result there was no transaction that could give rise to a gain or loss in either 2005 or 2006.

44. The Appellant accepts that it could have realized a foreign exchange gain pursuant to the provisions of the Act on the redemption of the 1,111 Convertible Debentures in 2006 but in fact did not do so. The Common Shares the Appellant issued on the redemption of those Convertible Shares had a Canadian dollar value in excess of the Canadian dollar amount for which those Convertible Debentures were issued. The Minister has incorrectly determined that the Appellant realized a gain in respect of the redemption of the 1,111 Convertible Debentures in 2006.

#### IV. Analysis

##### *General scheme of Act*

[38] Traditionally, a foreign exchange gain or loss has been considered to be realized upon repayment of a debt denominated in foreign currency, even if there is no actual conversion of the borrowed money into Canadian dollars. This view has more recently been confirmed in legislation.

[39] The relevant provisions of the *Act* with respect to debt on capital account are subsections 39(2) and 261(2). Subsection 39(2) provides in general that if a gain is realized due to foreign currency fluctuations, the gain is deemed to be a capital gain from the disposition of foreign currency. If there is no actual conversion of the foreign currency, subsection 261(2) of the *Act* requires that the foreign currency be translated into Canadian dollars at the relevant spot rates.

[40] The application of these provisions to a repayment of debt denominated in foreign currency is relatively straightforward. The issue price of the debt is translated into Canadian dollars computed at the date of issue and the amount paid on repayment is translated into Canadian dollars computed at the date of repayment. If the debt is on capital account, any decrease in these amounts is deemed to be a capital gain under s. 39(2).

[41] The relevant provisions of the *Act*, as they read for the relevant taxation years, are reproduced below.

**39(2) Capital gains and losses in respect of foreign currencies -** Notwithstanding subsection (1), where, by virtue of any fluctuation after 1971 in the value of the currency or currencies of one or more countries other than Canada relative to Canadian currency, a taxpayer has made a gain or sustained a loss in a taxation year, the following rules apply:

(a) the amount, if any, by which

(i) the total of all such gains made by the taxpayer in the year (to the extent of the amounts thereof that would not, if section 3 were read in the manner described in paragraph 1(a) of this section, be included in computing the taxpayer's income for the year or any other taxation year)

exceeds

(ii) the total of all such losses sustained by the taxpayer in the year (to the extent of the amounts thereof that would not, if section 3 were read in the manner described in paragraph 1(a) of this section, be deductible in computing the taxpayer's income for the year or any other taxation year), and

(iii) if the taxpayer is an individual, \$200,

shall be deemed to be a capital gain of the taxpayer for the year from the disposition of currency of a country other than Canada, the amount of which capital gain is the amount determined under this paragraph; and

(b) the amount, if any, by which

(i) the total determined under subparagraph (a)(ii),

exceeds

(ii) the total determined under subparagraph (a)(i), and

(iii) if the taxpayer is an individual, \$200,

shall be deemed to be a capital loss of the taxpayer for the year from the disposition of currency of a country other than Canada, the amount of which capital loss is the amount determined under this paragraph.

[...]

**261(2) Canadian currency requirement** - In determining the Canadian tax results of a taxpayer for a particular taxation year,

(a) subject to this section, other than this subsection, Canadian currency is to be used; and

(b) subject to this section, other than this subsection, subsection 79(7) and paragraphs 80(2)(k) and 142.7(8)(b), if a particular amount that is relevant in computing those Canadian tax results is expressed in a currency other than Canadian currency, the particular amount is to be converted to an amount expressed in Canadian currency using the relevant spot rate for the day on which the particular amount arose.

### *Application to conversions*

[42] This appeal concerns the potential application of s. 39(2) and s. 261(2) to the conversions and the redemption of the Convertible Debentures. The analysis will begin with the conversions because they account for almost all of the amounts assessed.

[43] The Convertible Debentures are on capital account to Agnico. Accordingly, s. 39(2) will require capital gains to be realized if the conversions result in gains to Agnico due to foreign currency fluctuations.

[44] The central question, then, is whether Agnico realized gains on the conversions due to foreign currency fluctuations.

[45] This inquiry necessitates a comparison of the amount received for the issuance of the Convertible Debentures and the amount paid for the extinguishment of the Convertible Debentures on the conversions, with both amounts reflected in Canadian dollars. If there is any doubt that a Convertible Debenture was extinguished on a conversion, the doubt is removed by Article 2.15 of the Indenture (last paragraph).

[46] It is useful to begin by viewing the matter from an economic standpoint. Viewed from this lens, it is clear that Agnico did not realize gains on the conversions and instead incurred an aggregate loss. In other words, the amount Agnico received for the issuance of the Convertible Debentures was much less than what it paid out measured by the trading price of the Common Shares issued on the conversions.

[47] This is not the end of the matter, however. The measure of what Agnico paid out by issuing Common Shares is not necessarily reflected by the shares' trading price. Rather, the amount paid out by Agnico is the amount for which the Common Shares were issued: *Teleglobe Canada Inc. v The Queen*, 2002 FCA 408 and *King Rentals Ltd. v The Queen*, 96 DTC 1132 (TCC).

[48] *Teleglobe* instructs that the amount paid for the issuance of shares that are issued in exchange for property is the "true consideration" for the shares, which is generally determined by the agreement of the parties. It may also be reflected in the stated capital account maintained for the shares because a corporation is required to reflect the true consideration in this account.

[49] Pelletier J.A. describes the principle at paragraph 31 of *Teleglobe*:

[31] Absent factors which would make the transaction impeachable, the agreement of the parties determines the cost to the corporation of issuing shares in exchange for property. By statute, the corporation is bound to reflect the true consideration received for the issuance of the shares in its capital accounts. As a result, while one can say that the capital accounts are an indication of the agreement between the parties, it is the agreement of the parties, not the capital accounts which is determinative of the cost. Consequently, the trial judge was correct in saying that the consideration was the amount agreed between the parties and "reflected" in the director's resolution and in the increase to the stated capital of the classes of shares issued (see paragraph 12 above).

[50] It is necessary, then, to search for the consideration as agreed by the parties and as reflected in the stated capital account.

[51] In this case, the stated capital account maintained by Agnico does not provide assistance because no specific dollar amount was added to this account by Agnico with respect to the conversions.

[52] I turn then to the transaction documents which set out the terms of the Convertible Debentures. The Indenture and the Prospectus clearly contemplate that the Common Shares are to be issued for US \$14.00 per Common Share, which is equal to US \$1,000 on a per Convertible Debenture basis (first page of Prospectus, and section 12.2 of the Indenture which states a conversion rate of “71.429 shares per U.S.\$1,000 Principal Amount of Securities”).

[53] Agnico suggests, in effect, that these provisions do not reflect the agreement of the parties. It suggests that the Common Shares are issued for the fair market value of the Convertible Debentures at the time of the conversions, which is approximately equal to the trading price of the Common Shares.

[54] The basis for this argument, as I understand it, is that the parties have agreed to exchange the Convertible Debentures for Common Shares. I do not agree with this submission because it does not give due weight to the transaction documents and it does not accurately reflect the true consideration received by Agnico for the Common Shares. Agnico received US \$1,000 per Convertible Debenture and for this it was committed to issue 71.429 Common Shares. It was this commitment which led to the Common Shares being issued. It was not because Agnico received the fair market value of the Convertible Debentures.

[55] I conclude, then, that the consideration received for the issuance of the Common Shares is US\$14 per Common Share or US \$1,000 per Convertible Debenture. Further, in accordance with *Teleglobe*, this is the amount paid by Agnico for the extinguishment of the Convertible Debentures on the conversions.

[56] Where does this leave us? In the result, the amount received by Agnico on issuance of a Convertible Debenture and the amount paid by Agnico for the extinguishment of a Convertible Debenture is in each case US \$1,000.

[57] The remaining piece of the puzzle is to translate these two amounts into Canadian dollars, as required by s. 261(2).

[58] Subsection 261(2) requires that the relevant amounts be translated into Canadian dollars at the spot rates when the amounts “arose.”

[59] The appropriate translation date for the amount received by Agnico for the issuance of the Convertible Debentures is not in dispute – it is the date of issuance of the Convertible Debentures, which is approximately February 15, 2002.

[60] It is less clear what the appropriate translation date should be for the amount paid out by Agnico on the conversions. Agnico suggests that the appropriate date is when the Convertible Debentures were issued. The Crown suggests that the appropriate date is when the debt was extinguished.

[61] In my view, the appropriate translation date should be when the consideration for the Common Shares was received by Agnico. Was this the amount paid on issuance of the Convertible Debentures or was it the amount of the debt that was extinguished on the conversion? This is a difficult issue, partly because the relevant amounts are the same – US \$1,000.

[62] The conclusion that I have reached is that the appropriate translation date in this particular case is the date that the Convertible Debentures were issued. This is when the true consideration for the issuance of the Common Shares was received by Agnico. I wish to emphasize that this conclusion is dependant on the facts of this particular case.

[63] I have been assisted in this conclusion by an analogy to a simple example in which the relevant amounts are different. Suppose convertible debentures are issued for \$1,500, the principal amount of the debt is \$1,100, and the convertible debentures are convertible for a fixed number of common shares. On conversion of the convertible debentures for common shares, what is the consideration for the shares? Is it \$1,500 or is it \$1,100? In my view, the true consideration is \$1,500. This amount was received by the issuer, and in return the holder was entitled to a fixed amount of common shares. To conclude that holders paid only \$1,100 for the common shares does not reflect reality.

[64] The Crown's position is that the consideration is not the issue price of the Convertible Debentures but the principal amount of the debt at the time of the conversions. It relies on section 12.3 of the Indenture which deals with Conversion Procedures. The relevant excerpt is set out below.

No payment or adjustment will be made for dividends on or other distributions with respect to any Common Shares except as provided for in Article 12. The Common Shares issued on the conversion (together with the cash payment, if any,

in lieu of fractional shares) shall be applied to fully satisfy the Company's obligation to repay the Principal Amount. (Emphasis added)

[65] I respectfully disagree with the Crown that the sentence above is intended to reflect the consideration for the Common Shares. This sentence is buried in a lengthy section dealing with conversion procedures, and it has a more limited purpose, in my view.

[66] All that section 12.3 appears to accomplish is to ensure that the debt has been satisfied on a conversion. But the issuance of the Common Shares does more than satisfying the debt. It also satisfies Agnico's commitment to issue Common Shares that is embedded in the conversion right.

[67] For these reasons, I conclude that the equivalent of \$1,588 per Convertible Debenture was received on issuance of the Convertible Debenture and the same amount was paid for the extinguishment of the Convertible Debentures on the conversions. There is no foreign exchange gain.

[68] In light of this conclusion, it is not necessary that I consider Agnico's further submission concerning the rollover in subsection 51(1) of the *Act*.

[69] Finally, I would comment that I have not relied on a judicial decision that was strongly relied on by Agnico for the proposition that the consideration for the shares is the issue price of the convertible debentures: *Insight Venture Associates III, LLC v SLMSOFT Inc.*, 67 OR (3rd) 115 (OSCJ). This was a decision dealing with convertible debentures in a commercial law context. I have not placed reliance on it because the oral reasons in that case are not sufficiently clear on the point.

#### *Application to redemption*

[70] I now turn to the redemption of the Convertible Debentures which occurred on February 15, 2006.

[71] Agnico submits that it did not realize a foreign exchange gain on the redemption because it paid out more than it received. The basis for this position is that the trading price of the Common Shares issued on redemption had a value greater than the amount received on issuance of the Convertible Debentures.



[72] The Crown, on the other hand, submits that Agnico paid out less than the amount received because the amount paid on redemption was based on the principal amount which had decreased in Canadian dollar terms.

[73] I agree with the Crown's position on this issue. The terms of the Indenture make it clear that the Common Shares issued on redemption are in satisfaction of the Redemption Price which became due and payable on the date of redemption (section 3.5 of the Indenture.) The Redemption Price was US \$1,022.68 for each Convertible Debenture, which is equal to the principal amount plus unpaid interest (ASF, Tab C).

[74] For purposes of determining the number of Common Shares that would be issued to satisfy the Redemption Price, the Indenture contained a formula that valued the Common Shares at a price different than the trading price on the date of redemption. In particular, the formula used earlier trading prices and a discount. In accordance with the formula, 63.4767 Common Shares were issued for each Convertible Debenture.

[75] Based on the provisions of the Indenture, I have concluded that the consideration for the issue of the Common Shares was US \$1,022.68 for 63.4767 Common Shares.

[76] Agnico's submission that the Common Shares should be valued at the trading price at the time of redemption fails to take due account of the relevant provisions of the Indenture.

[77] The determination by the Minister of the foreign exchange gain on redemption will be upheld, and this part of the appeal will be dismissed.

## V. Conclusion

[78] In summary, I would conclude that no foreign exchange gains were realized on the conversions and that the Minister's determination of foreign exchange gain on the redemption should be upheld.

[79] Costs will be awarded to Agnico.

Signed at Ottawa, Ontario this 4<sup>th</sup> day of November 2014.

“J.M. Woods”



CITATION: 2014 TCC 324  
COURT FILE NO.: 2012-2524(IT)G  
STYLE OF CAUSE: AGNICO-EAGLE MINES LIMITED and  
HER MAJESTY THE QUEEN  
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APPEARANCES:

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