Date: 20070126

Docket: A-291-06
A-406-06

Citation: 2007 FCA 22

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

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

HONEYWELL LIMITED

Respondent

Heard at Ottawa, Ontario, on January 16, 2007.

Judgment delivered at Ottawa, Ontario, on January 26, 2007.

REASONS FOR JUDGMENT BY: NOËL J.A.

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

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REASONS FOR JUDGMENT

NOËL J.A.

[1] These reasons dispose of two appeals by the Crown which were consolidated by Order of this Court. The first (A-291-06) is from an interlocutory Order of Bowman C.J. of the Tax Court of Canada (2006 TCC 325), disallowing some of the substantive amendments sought by the Crown in its Reply to the Respondent's ("Honeywell" or the "respondent") Notice of Appeal.

[2] The second appeal (A-406-06) is from an amended Order issued by Bowman C.J. on September 26, 2006, further to a motion for reconsideration in which he allowed many of the sought amendments that were inadvertently omitted in the original Order, but refused others.

[3] Honeywell by way of cross-appeal also challenges some of the amendments allowed by Bowman C.J. in both his original and his amended Order.

[4] The underlying issue in the appeals and cross-appeals turns on the legal effect of a waiver of the normal reassessment period and in particular the extent to which the Minister of National Revenue (the "Minister") is restricted in defending a reassessment issued pursuant to a waiver by the matter specified therein.

[5] The statutory provisions relevant to the analysis which follows are set out in Appendix "A" to these reasons.

RELEVANT FACTS

[6] The respondent is the Canadian subsidiary of Honeywell Inc., an American corporation ("Honeywell U.S."). Honeywell U.S. owned a number of European subsidiaries, including Honeywell B.V. (a subsidiary in the Netherlands), and Honeywell S.A. Europe (a Belgian subsidiary).

[7] The respondent also incorporated a wholly owned subsidiary in the Netherlands Antilles, Honeywell Limited Finance N.V. ("Honeywell N.V."), in 1991. The respondent borrowed Cdn. $115,000,000 from various financial institutions, with interest payable, and used the funds to capitalize Honeywell N.V., which then loaned the money to Honeywell B.V., with interest payable. These transactions form the basis of the Minister's reassessments issued against Honeywell with respect to its 1992, 1993 and 1994 taxation years.

[8] The interest receivable by Honeywell N.V. from Honeywell B.V. in these transactions would normally constitute foreign accrual property income ("FAPI") to Honeywell N.V. and as such would be taxable in the hands of Honeywell pursuant to subsection 91(1) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Suppl.) ("ITA"). However, where interest is paid to a foreign affiliate of a taxpayer by another foreign affiliate of the taxpayer or another non-resident corporation with which

the taxpayer does not deal at arm's length on borrowed money for use in the payer's active business, clause 95(2)(a)(ii)(B) of the ITA provides an exception to the FAPI inclusion. Honeywell availed itself of this exception in filing its tax returns for the relevant years.

[9] Even though the literal requirements of clause 95(2)(a)(ii)(B) were satisfied, the Minister came to the view, before the expiration of the normal reassessment period, that Honeywell had misused the ITA in its favour in a manner which renders the General Anti-Avoidance Rule ("GAAR") as provided under section 245 applicable. Specifically, the Minister considered that the unwritten policy underlying this clause and the related FAPI provisions contemplate that the foreign affiliate that wishes to take advantage of paragraph 95(2)(a) must be a foreign affiliate of a Canadian based multinational corporation (Appellant's Memorandum, para. 11). As Honeywell N.V. did not fall within that description (since it was owned by Honeywell U.S.), the Minister took the position that the FAPI provisions had been misused and that section 245 should apply to recategorize the transactions and tax Honeywell pursuant to paragraph 12(1)(c) on the interest earned as though it had loaned $115,000,000 directly to Honeywell B.V.

[10] However, the Minister, relying on the waivers of the normal reassessment period filed by Honeywell for the years in issue did not reassess immediately. The waivers in question were given with respect to:

> Interest income being reassessed under paragraph 12(1)(c) of the Income Tax Act, by reason of the application of Section 245 of the Income Tax Act.

[11] The Minister eventually issued the reassessments on a basis consistent with the terms of the waiver.

[12] Honeywell brought an appeal before the Tax Court and in the Reply to the Notice of Appeal, the Minister defended the reassessments in accordance with the analysis summarized in para. [9] above.

[13] During the course of the exchange of documents leading to the examination for discovery, the Minister came across information indicating in his view that the transactions giving rise to the reassessments may have been part of a broad series of transactions which involved the transfer of funds from Honeywell to Honeywell U.S. by Honeywell borrowing funds and transferring them through Honeywell N.V. and through the European subsidiaries of Honeywell U.S. to enable Honeywell U.S. to pay off debt.

[14] Relying on that information, the Crown sought to amend its Reply to allege that since the funds were not used in the active business of Honeywell B.V., the interest payments made by it to Honeywell N.V. were income from property or FAPI to Honeywell N.V. and to further allege under the GAAR that the FAPI rules were misused, because the funds were not used in an active business. (The Crown refers to these two groups of arguments as the "FAPI argument" and as the "alternative GAAR argument" respectively (Appellant's Memorandum, para. 6)).

[15] Honeywell contested these amendments and the matter came before Bowman C.J. for adjudication.

TAX COURT DECISION

[16] In the reasons given in support of the first Order issued June 22, 2006, Bowman C.J. began his analysis by noting that implicit in the Minister's reassessments is the acceptance that the requirements of subsection 95(2) had been met and therefore, that the funds were used by Honeywell B.V. for active business purposes (Reasons, para. 9).

[17] Bowman C.J. then identified the two arguments which were made against the grant of the amendments. The first is that the Crown was attempting to raise a new basis of assessment after the expiration of the normal reassessment period contrary to what is permitted by subsection 152(9) of the Act. He quickly dismissed this objection on his view that the decision of this Court in *The Queen v. Loewen*, 2004 DTC 6321, "permits the Crown to do anything it wants in pleadings" so long as the assessed amounts are not increased (Reasons, para. 13).

[18] The second argument is that the Crown is limited by the wording of the waiver to the particular ground on which the reassessments were issued. In this respect, Bowman C.J. noted that including interest in income under paragraph 12(1)(c) because of a GAAR recharacterization is entirely different from including in Honeywell's income a foreign affiliate's passive income applying the FAPI rules (Reasons, para. 18).

[19] Bowman C.J. rejected the notion that the Minister could under the authority of the waivers assert a new basis to justify the reassessments because in his words (Reasons, para. 21):

> a. To do so would be to write subsection 152(4.01) completely out of the *Act*.
>
> b. To do so would violate rules of simple fairness. The taxpayer was induced to sign a waiver on the basis that the Minister would apply only GAAR and paragraph 12(1)(*c*). The Minister, having gotten in under the wire on one basis now says that the field is wide open. Perhaps if there were no waiver the Minister has the sort of *carte blanche* that *Loewen* suggests but once there is a waiver some effect must be given to the restrictions imposed by subsection 152(4.01). One cannot do an end run around them and in effect come in the back door when the front door is locked.
>
> c. I do not interpret the words "matter specified in an election" ("question précisée dans une renonciation") as meaning simply an amount of money, nor do I read the waiver as saying "anything arising generally out of your relations with your subsidiary Honeywell NV". Some effect must be given to the words "reasonably" and "to the extent that but only to the extent that..." I think a "matter" in subsection 152(4.01) means a separate subject matter or a discrete head of taxation. (…) I think a GAAR recharacterization of a foreign affiliate's income as interest received by a parent is a fundamentally different subject matter or head of taxation, and therefore a different matter, from a FAPI assessment.

[20] Bowman C.J. concluded his reasons by indicating the amendments which he was allowing and those which he was not permitting (Reasons, paras. 22 and 23). An order was issued accordingly.

[21] The Crown then invited Bowman C.J. to reconsider his decision on the ground that he had failed to deal with a number of amendments which were before him. In a separate set of reasons issued September 26, 2006, Bowman C.J. disposed of these further amendments, allowing some and refusing others.

[22] At the conclusion of these supplemental reasons, Bowman C.J. explained that he had disposed of these further amendments in a manner consistent with his original reasons, that is (Supplemental Reasons, para. 14):

> Broadly speaking, then, the amendments which I am prepared to permit are those that are consistent with the GAAR assessment. The amendments which I am not prepared to permit are those that relate to the justification of the assessment under the FAPI rules.

POSITION OF THE PARTIES

[23] In support of both appeals, the Crown argues that Bowman C.J., after having recognized that the FAPI argument would have been unobjectionable if the reassessments had been made before the normal reassessment period, could not hold that the restrictions imposed by the waivers lead to a different result with respect to reassessments issued after the normal reassessment period (Appellant's Memorandum, para. 25a)).

[24] In this respect, the Crown contends that Bowman C.J. erred in holding that the subject matter of the reassessments, as outlined in the waivers, is fundamentally different from a FAPI assessment (Appellant's Memorandum, para. 25 b)). Because an assessment pertains to an amount of income, the "matter" referred to in subparagraph 152(4.01)(a)(ii) by necessity refers to an amount of income, and the only limitation imposed by a waiver is that no tax can be assessed in excess of the amount which that "matter" gives rise to (Appellant's Memorandum, para. 37).

[25] According to the Crown, the Minister's power to raise new arguments, whether legal or factual, is governed by subsection 152(9) and is not restricted by the waiver (Appellant's Memorandum, para. 42). Bowman C.J. therefore erred in refusing the amendments insofar as they relate to the FAPI argument on the ground that they pertained to a matter other than that specified in the waiver.

[26] For the same reasons, Bowman C.J. also erred in denying the specific amendments that he did with respect to the alternative GAAR argument.

[27] The paragraphs of the Draft Amended Reply which according to the Crown were erroneously refused by reasons of the aforesaid arguments are paragraphs 18A, 21A, 21B, 21C, 21D, 23(a), 33A and 33B.

[28] Lastly, the Crown asserted that the supplementary reasons issued by Bowman C.J. again failed to deal with the proposed amendment set out in paragraph 24 of the Draft Amended Reply insofar as it seeks to incorporate a reference to subsection 248(10) of the Act. It asks that this error be remedied, and that the proposed amendment be allowed.

[29] In responding to the appeals, Honeywell supports Bowman C.J.'s view that the waiver provision (subsection 152(4.01)) does not support the amendments which were refused but takes issue with Bowman C.J.'s suggestion that the Crown can plead whatever it wants based on the existing state of the jurisprudence. Honeywell maintains that the FAPI argument, as well as the amendments relating to the alternative GAAR argument which were refused, raise an entirely new ground of reassessment and subsection 152(9) can only assist the Crown when a new argument is invoked.

[30] By way of its cross-appeals, Honeywell contends that Bowman C.J. erred in allowing the amendments to a number of paragraphs pertaining to the GAAR argument (paragraphs13A, 21E, 23(e), 23(f), 24, 25, 26, 29, 30 and 33 of the Draft Amended Reply). It says that although Bowman C.J. correctly concluded that the Crown is not permitted to advance the FAPI argument, he erred in permitting the Crown to include those paragraphs which he allowed with respect to the GAAR argument. In particular, Honeywell submits that these paragraphs are inconsistent with the terms of the waiver (Honeywell's Memorandum, para. 87(b)) and that in any event, the new grounds which they assert are not open to the Minister pursuant to subsection 152(9) (Honeywell's Memorandum, para. 87(c)).

ANALYSIS AND DECISION

[31] Despite the urging of the parties, it is not necessary or opportune to attempt to settle the debate surrounding the interpretation of subsection 152(9) or to determine whether as Bowman C.J. puts it, the Minister can "do anything it wants in pleadings" (counsel for the Crown readily conceded that this last statement was overly broad). The reassessments with which we are concerned were not issued within the normal assessment period but thereafter in reliance on the waivers filed by Honeywell. In my respectful view, Bowman C.J. properly identified the question which must be answered in this case when he asked at paragraph 18 of his reasons:

> In light of the wording in the waivers and of the restrictions in them and in subsection 152(4.01) could the Minister have reassessed applying paragraph 95(2)(*a*) but without applying section 245?"

[32] A waiver when given by a taxpayer and accepted by the Minister gives rise to a bargain of sorts. The taxpayer foregoes the benefit of the normal assessment period for the particular year with respect to the matter specified in the waiver, and the Minister, relying on the waiver, acquires the right to reassess outside the normal assessment period, but only with respect to the matter specified in the waiver. Just as the taxpayer cannot alter the waiver once given, the Minister cannot issue a reassessment that does not reasonably relate to the matter specified in the waiver. As pointed out by Bowman C.J., this is made clear by the language of subparagraph 152(4.01)(a)(ii) which provides that when relying on a waiver the Minister may reassess, "but only to the extent that, [the reassessment] can reasonably be regarded as relating to, … a matter specified in a waiver filed with the Minister in respect of the year, …". Accordingly, where a reassessment has been issued pursuant to a waiver, the reference to a "reassessment" in subsection 152(4) can only mean a reassessment as permitted by the waiver.

[33] It follows that if the Minister cannot reassess on the basis proposed by the amendments because of the wording of the waivers, subsection 152(9) cannot be construed as allowing these amendments. This is so regardless of the interpretation which may be given to that provision in another context.

[34] In my view, Bowman C.J. provided the correct answer to the question that he asked when he said that including interest in Honeywell's income under paragraph 12(1)(c) because of a GAAR recharacterization is entirely different from including the interest income of Honeywell N.V., its foreign affiliate, in Honeywell's income pursuant to the FAPI rules as the Crown now tries to assert (Reasons, para. 18). Indeed, the premise underlying the reassessment is that Honeywell B.V., a non-resident corporation which does not deal at arm's length with the respondent, was using the borrowed funds in the course of an active business with the result that the requirements of subsection 95(2) had been met while the premise underlying the latter is that the funds were not so used and therefore subsection 95(2) has no application.

[35] In the end, Bowman C.J. concluded by reference to the words of subsection 152(4.01) that the proposed inclusion of FAPI in Honeywell's income is not a matter that reasonably relates to the matter specified in the waiver. This is a conclusion that was open to him on the material before him, and in my respectful view it is the correct conclusion.

[36] The Crown further argues that Bowman C.J. erred in refusing to allow those amendments that he did with respect to the alternative GAAR argument. The Crown recognizes in its memorandum that the alternative GAAR arguments are based on the premise that the borrowed funds were not used by Honeywell B.V. in an active business (Appellant's Memorandum, para. 6) and it is apparent that Bowman C.J. rejected the paragraphs that he did because they are inconsistent with the premise underlying the waiver i.e., that the requirements of paragraph 95(2)(a) had been met. It was open to Bowman C.J. to conclude that the paragraphs that he refused did not reasonably relate to the matter specified in the waiver.

[37] Finally, with respect to the Crown's submission that Bowman C.J. should have allowed the reference to subsection 248(10) in its pleadings (paragraph 24 of the Draft Amended Reply), the short answer is that this provision provides for a definition which applies "For the purposes of the Act" whenever the facts giving rise to its application are proven or presumed. There is accordingly no need to amend the pleadings to make reference to this provision.

[38] This disposes of the Crown's appeals.

[39] The cross-appeals can be disposed of rapidly. Bowman C.J. allowed some of the proposed paragraphs relating to the GAAR argument to the extent that they did not assert that the FAPI provisions had not been met or challenge the premise that the borrowed funds had been used by Honeywell B.V. in an active business. Subject to this, the paragraphs that he did allow permit the GAAR to be pleaded with respect to the series of transactions as it is now alleged to have taken place.

[40] In this respect, Bowman C.J. in his reasons noted Mr. Chamber's position that the GAAR maybe useful in permitting the Crown to trace the funds trough the various European subsidiaries (Reasons, para. 10). He then said (Para. 11):

> I make no comment on the merits of these assertions. My only function as a motions judge is to decide whether the Crown is entitled to amend its reply to raise these new arguments

[41] Given that the amendments in question purport to provide a complete picture of the transactions which the reassessments seek to recharacterize pursuant to the GAAR, it was open to Bowman C.J. to hold that they reasonably relate to the matter set out in the waivers.

[42] Finally, if it is open to Minister to reassess on the basis now being proposed in these paragraphs by virtue of the waivers, subsection 152(9) cannot logically be construed as preventing the Minister from obtaining the amendments sought. Accordingly, Honeywell's alternative contention must also fail.

[43] I would therefore dismiss both the appeals and the cross-appeal and given the result direct that the parties assume their respective costs.

"Marc Noël"

J.A.

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

"I agree,
C. Michael Ryer J.A."

APPENDIX "A"

LEGISLATIVE FRAMEWORK

91. (1) In computing the income for a taxation year of a taxpayer resident in Canada, there shall be included, in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer, as income from the share, the percentage of the foreign accrual property income of any controlled foreign affiliate of the taxpayer, for each taxation year of the affiliate ending in the taxation year of the taxpayer, equal to that share's participating percentage in respect of the affiliate, determined at the end of each such taxation year of the affiliate.

91. (1) Dans le calcul du revenu pour une année d'imposition d'un contribuable résidant au Canada, il doit être inclus, relativement à chaque action qui lui appartient dans le capital-actions d'une société étrangère affiliée contrôlée du contribuable, à titre de revenu tiré de l'action, le pourcentage du revenu étranger accumulé, tiré de biens, de toute société étrangère affiliée contrôlée du contribuable, pour chaque année d'imposition de la société affiliée qui se termine au cours de l'année d'imposition du contribuable, égal au pourcentage de participation de cette action, afférent à la société affiliée et déterminé à la fin de chaque telle année d'imposition de cette dernière.

95. (2) **Determination of certain components of foreign accrual property income.** – For the purposes of this subdivision,

(a) in computing the income from an active business of a foreign affiliate of a taxpayer there shall be included

(i) any income from sources in a country other than Canada that would otherwise be income from property or a business other than an active business, to the extent that it pertains to or is incident to an active business carried on in a country other than Canada by the affiliate or any other non-resident corporation with which the taxpayer does not deal at arm's length, and

(ii) any amount paid or payable to the affiliate by, and, where the affiliate is a member of a partnership, the affiliate's share of any amount paid or payable to the partnership by,

95. (2) **Détermination de certains éléments du revenu étranger accumulé, tiré de biens**. Pour l'application de la présente sous-section :

a) il doit être inclus dans le calcul du revenu provenant d'une entreprise exploitée activement d'une société étrangère affiliée d'un contribuable :

(i) tout revenu provenant de sources situées dans un pays étranger et qui serait autrement un revenu de biens ou d'une entreprise autre qu'une entreprise exploitée activement, dans la mesure où il appartient ou se rapporte de manière accessoire à l'exploitation active d'une entreprise exploitée dans un pays étranger par la société affiliée ou par toute autre société non-résidente avec laquelle le contribuable a un lien de dépendance,

(ii) tout montant payé ou payable à la société affiliée et, dans le cas où celle-ci est l'associée d'une société de personnes, sa part de tout montant payé ou payable à la société de personnes :

(A) another foreign affiliate of the taxpayer, or

(B) any other non-resident corporation with which the taxpayer does not deal at arm's length

to the extent that, in computing the amount prescribed to be its earnings from an active business other than a business carried on by it in Canada, that amount is deductible or would be deductible if the non-resident corporation were a foreign affiliate of the taxpayer;

...

152 (4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(*a*) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or willful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or

(A) soit par une autre société étrangère affiliée du contribuable,

(B) soit par une autre société non-résidente avec laquelle le contribuable a un lien de dépendance,

dans la mesure où ce montant est ou serait déductible si la société non-résidente était une société étrangère affiliée du contribuable, dans le calcul du montant considéré, aux termes du règlement, comme étant son revenu tiré d'une entreprise exploitée activement autre qu'une entreprise exploitée par elle au Canada;

[…]

152 (4) Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l'impôt pour une année d'imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu'aucun impôt n'est payable pour l'année à toute personne qui a produit une déclaration de revenu pour une année d'imposition. Pareille cotisation ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans les cas suivants:

a) le contribuable ou la personne produisant la déclaration:

(i) soit a fait une présentation erronée des faits, par négligence, inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi,

(ii) soit a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année;

…

(4.01) Notwithstanding subsections 152(4) and 152(5), an assessment, reassessment or additional assessment to which paragraph 152(4)(a) or 152(4)(b) applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(*a*) where paragraph 152(4)(a) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or willful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or

(ii) a matter specified in a waiver filed with the Minister in respect of the year; and

(*b*) where paragraph 152(4)(b) applies to the assessment, reassessment or additional assessment,

(i) the assessment, reassessment or additional assessment to which subparagraph 152(4)(b)(i) applies,

(ii) the assessment or reassessment referred to in subparagraph 152(4)(b)(ii),

(iii) the transaction referred to in subparagraph 152(4)(b)(iii),

(iv) the payment or reimbursement referred to in subparagraph 152(4)(b)(iv),

(v) the reduction referred to in

[…]

(4.01) Malgré les paragraphes (4) et (5), la cotisation, la nouvelle cotisation ou la cotisation supplémentaire à laquelle s'appliquent les alinéas (4)a) ou b) relativement à un contribuable pour une année d'imposition ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans la mesure où il est raisonnable de considérer qu'elle se rapporte à l'un des éléments suivants:

a) en cas d'application de l'alinéa (4)a):

(i) une présentation erronée des faits par le contribuable ou par la personne ayant produit la déclaration de revenu de celui-ci pour l'année, effectuée par négligence, inattention ou omission volontaire ou attribuable à quelque fraude commise par le contribuable ou cette personne lors de la production de la déclaration ou de la communication de quelque renseignement sous le régime de la présente loi,

(ii) une question précisée dans une renonciation présentée au ministre pour l'année;

b) en cas d'application de l'alinéa (4)b):

(i) la cotisation, la nouvelle cotisation ou la cotisation supplémentaire à laquelle s'applique le sous-alinéa(4)b)(i),

(ii) la cotisation ou la nouvelle cotisation visée au sous-alinéa (4)b)(ii),

(iii) l'opération visée au sous-alinéa (4)a)(iii),

(iv) le paiement ou le remboursement visé au sous-alinéa (4)b)(iv),

(v) la réduction visée au sous-alinéa (4)b)(v),

(vi) l'application visée au sous-alinéa (4)b)(vi).

subparagraph 152(4)(b)(v), or

(vi) the application referred to in subparagraph 152(4)(b)(vi).

…

(9) The Minister may advance an alternative argument in support of an assessment at any time after the normal reassessment period unless, on an appeal under this Act

(*a*) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and

(*b*) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

248(10) Series of transactions.
For the purposes of this Act, where there is a reference to a series of transactions or events, the series shall be deemed to include any related transactions or events completed in contemplation of the series.

[…]

(9) Le ministre peut avancer un nouvel argument à l'appui d'une cotisation après l'expiration de la période normale de nouvelle cotisation, sauf si, sur appel interjeté en vertu de la présente loi:

a) d'une part, il existe des éléments de preuve que le contribuable n'est plus en mesure de produire sans l'autorisation du tribunal;

b) d'autre part, il ne convient pas que le tribunal ordonne la production des éléments de preuve dans les circonstances.

248(10) Séries d'opérations
Pour l'application de la présente loi, la mention d'une série d'opérations ou d'événements vaut mention des opérations et événements liés terminés en vue de réaliser la série.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-406-06
STYLE OF CAUSE:	Her Majesty the Queen v. Honeywell Limited
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DATED:	January 26, 2007

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