

Federal Court of Appeal



Cour d'appel fédérale

Date: 20221019

Docket: A-264-21

Citation: 2022 FCA 178

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
LOCKE J.A.**

BETWEEN:

CAE INC.

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Montreal, Quebec, on October 19, 2022.

Judgment delivered from the bench at Montreal, Quebec, on October 19, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montreal, Quebec, on October 19, 2022.)

BOIVIN J.A.

[1] On March 30, 2009, under the Strategic Aerospace and Defence Initiative program, the Department of Industry Canada and CAE Inc. (CAE) entered into an agreement on “Project Falcon”, a CAE scientific research and experimental development project. Under the agreement, the Department of Industry contributed to the project by making financial contributions to CAE.

[2] Before this Court, the appellant admitted that the agreement at issue was in the nature of government assistance but argued that a distinction nevertheless had to be made between the capital loan and the interest rate differential.

[3] Ouimet J. of the Tax Court of Canada (the TCC judge) held that the amounts received by CAE were not paid under an ordinary business agreement in view of the terms of the agreement and, more specifically, the implicit rate of return, which he found to be significantly lower than the market rate of return for a comparable loan and therefore contrary to the business interests of a private lender (*CAE Inc. v. The Queen*, 2021 TCC 57 (the Decision) at paragraphs 137 and 143). The TCC judge therefore found that the contributions paid to CAE under the agreement in the 2012 and 2013 taxation years were government assistance within the meaning of subsection 127(9) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). CAE is appealing that decision to this Court.

[4] We are all of the opinion that the TCC judge properly directed himself by applying the authoritative case law principles in the matter as set out in *Canada v. Consumers' Gas Co.*, [1987] 2 F.C. 60; *Canada v. CCLC Technologies Inc.*, [1996] F.C.J. No. 1226 (QL); *Immunovaccine Technologies Inc. v. Canada*, 2014 FCA 196. Moreover, in relying on the evidence in the record as he did, the TCC judge did not commit a palpable and overriding error that would warrant intervention by this Court (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235). Despite the appellant's able submissions, it has not persuaded us that the TCC judge erred in not accepting the distinction that it proposes. We are unable to find support for the argument advanced by the appellant in either the case law or the legislation.

[5] For these reasons, the appeal will be dismissed with costs.

“Richard Boivin”

J.A.

Certified true translation
Vera Roy, Jurilinguist

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-264-21

STYLE OF CAUSE: CAE INC. v. HIS MAJESTY THE KING

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: OCTOBER 19, 2022

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DE MONTIGNY J.A.
LOCKE J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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