

Ottawa, Friday, June 23, 1989

Appeal No. 2979

IN THE MATTER OF an appeal heard March 2, 1989,
pursuant to section 51.19 of the *Excise Tax Act*, R.S.C.
1970, c. E-13 as amended (the Act);

AND IN THE MATTER OF a decision of the Minister of
National Revenue dated March 3, 1988, with respect to a
notice of objection served pursuant to section 51.15 of the
Act.

BETWEEN

STURDY TRUCK BODY (1972) LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

This appeal is dismissed. The Tribunal declares that the truck bodies manufactured by the appellant and installed on vehicles of less than 7,250 kg do not qualify for exemption from sales tax pursuant to section 8, Part XVII, Schedule III of the *Excise Tax Act*.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2979

STURDY TRUCK BODY (1972) LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Whether certain truck bodies qualify for tax exemption under section 8 of Part XVII of Schedule III of the Act - Whether the truck bodies were designed for permanent installation on trucks designed primarily for the carriage of freight with a gross vehicle mass rating of 7,250 kg or more - Meaning of the term "designed for" - Whether the Minister may be estopped by rulings issued by Revenue Canada, Customs and Excise.

DECISION: *The appeal is dismissed. The truck bodies were custom fitted and installed on trucks having a gross vehicle mass rating of less than 7,250 kg and therefore were not designed for permanent installation on tax-exempt trucks.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: March 2, 1989
Date of decision: June 23, 1989*

*Panel Members: Arthur B. Trudeau, Presiding Member
John C. Coleman, Member
Robert J. Bertrand, Q.C., Member*

Counsel for the Tribunal: Ginette Collin

Clerk of the Tribunal: Janet Rumball

*Appearances: Fred Cressman, for the Appellant
Jean Fitzgerald, for the Respondent*

Cases cited: *Peerless Page Industries Ltd. v. The Deputy Minister of National Revenue for Customs and Excise (1983) 8 T.B.R. 457; Levy Russell Limited. v. The Deputy Minister of National Revenue for Customs and Excise (1983) 8 T.B.R. 622; GRS Tool and Die Inc. v. The Deputy Minister of National Revenue for Customs and Excise (1981) 7 T.B.R. 313; Thomas Skinner & Son Ltd. v. The Deputy Minister of National Revenue for Customs and Excise (1984) 9 T.B.R. 396; Ocelot Industries Ltd. v. The Deputy Minister of National Revenue for Customs and Excise (1983) 8 T.B.R. 763; Stickel v. Minister of National Revenue (1972) 27 D.L.R. (3d) 721 (F.C., Trial Division); Northern Alberta Institute of Technology v. The Deputy Minister of National Revenue for Customs and Excise (1984) 9 T.B.R. 367.*

**Statutes and
Regulations Cited:**

Canadian International Trade Tribunal Act, S.C. 1988, c. 56, s. 60; Excise Tax Act, R.S.C. 1970, c. E-13, subss. 27(1) and 29(1), s. 51.1; ss. 1 and 8, Part XVII, Schedule III; Gross Vehicle Mass Rating Regulations, SOR/84-15, 1984 Canada Gazette Part II, p. 146, s. 2

Appeal No. 2979

STURDY TRUCK BODY (1972) LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
JOHN C. COLEMAN, Member
ROBERT J. BERTRAND, Q.C., Member

REASONS FOR DECISION

SUMMARY

This is an appeal for a declaration that certain truck bodies manufactured by the appellant, which were determined by the respondent to be taxable and were the subject of assessment and appeal, qualify for tax exemption under the Act on the grounds that these truck bodies were designed for permanent installation on tax-exempt trucks designed primarily for the carriage of freight with a gross vehicle mass rating of 7,250 kg or more (hereinafter referred to as "heavy trucks"). When designing its standard truck body, the appellant followed the guidelines laid down by the respondent to qualify for the exemption from sales tax. The appellant was informed by the respondent that no tax was owed but, subsequently, was advised of a change in the respondent's interpretation. As a result of this changed interpretation, the appellant was reassessed for duty on truck bodies installed on non-exempt trucks, i.e., a truck of a gross vehicle mass rating of less than 7,250 kg (hereinafter referred to as "light trucks").

The appeal is not allowed. The truck bodies in issue were custom fitted and installed on trucks having a gross vehicle mass rating of less than 7,250 kg and so were not designed for permanent installation on tax-exempt trucks. They do not qualify for exemption from sales tax as they were installed on non-exempt trucks.

THE LEGISLATION

The relevant legislative provisions, as they read during the period at issue, are as follows:

(a) The Excise Tax Act

*27.(1) There shall be imposed, levied and collected a consumption or sales tax at the rate specified in subsection (1.1) on the sale price of all goods
(a) produced or manufactured in Canada ...*

...

29.(1) *The tax imposed by section 27 does not apply to the sale or importation of the goods mentioned in Schedule III, other than those goods mentioned in Part XIII of Schedule III that are sold to or imported by persons exempt from consumption or sales tax under subsection 31(2).*

...

51.1 (1) *The Minister may, in respect of any matter, assess a person for any tax, penalty, interest or other sum payable by that person under this Act and may, notwithstanding any previous assessment covering, in whole or in part, the same matter, make such additional assessments as the circumstances require.*

(2) *The Minister may, in respect of any matter covered by an assessment, vary the assessment or reassess the person assessed.*

*SCHEDULE III
PART XVII
TRANSPORTATION EQUIPMENT*

1. *Highway truck tractors; trucks designed primarily for the carriage of freight with a gross vehicle mass rating, within the meaning given to that expression by regulation of the Governor in Council, of seven thousand two hundred and fifty kilograms (7 250 kg) or more.*

...

8. *Parts and equipment, designed for permanent installation on the tax-exempt goods mentioned in sections 1, 2, 3, 4, 5, 5.1, 5.2 and 7 of this Part where, in the opinion of the Minister, the fair sale price by the Canadian manufacturer or the fair duty-paid value of the imported article, exceeds two thousand dollars per unit; all parts and equipment installed on the tax-exempt goods mentioned in sections 1, 2, 3, 4, 5, 5.1, 5.2 and 7 of this Part prior to the first use of those tax-exempt goods; except that parts and equipment designed for permanent installation or installed on the tax-exempt goods mentioned in section 1 of this Part are exempted from tax only if they are designed to facilitate the carriage or handling of freight.*

(b) Gross Vehicle Mass Rating Regulations

General

2. *For the purposes of sections 1 and 2 of Part XVII of Schedule III to the Excise Tax Act, the expression "gross vehicle mass rating" means the value specified by the vehicle manufacturer as the mass of a single loaded vehicle.*

THE FACTS

This is an appeal pursuant to section 51.19 of the *Excise Tax Act*¹ as amended (the Act) from the respondent's Notice of Decision Number 70141AE, dated March 3, 1988, dismissing the appellant's claim for a refund of sales tax paid on certain truck bodies manufactured by the appellant. The period of assessment is from May 1, 1983, to October 31, 1986. The claim is for \$60,243.58.

The appellant seeks a declaration that these truck bodies qualify for exemption from sales tax pursuant to section 8, Part XVII, Schedule III of the Act.

The appeal was originally commenced before the Tariff Board. However, under section 60 of the *Canadian International Trade Tribunal Act*,² the appeal is taken up and continued by the Canadian International Trade Tribunal.

The appellant company, Sturdy Truck Body (1972) Limited (Sturdy Truck), is a small, family-owned manufacturer of truck bodies. The truck bodies are known as "service truck bodies," since the main purpose of the truck is to provide a service. Sturdy Truck was created in 1972. In that year, Mr. Lucien Roussy, who testified as its principal witness, took over the company. Over the course of time, Sturdy Truck became a custom truck body manufacturer. In 1982 or 1983, it began manufacturing service type truck bodies, the subject of this appeal.

Mr. Roussy testified that prior to that time, there was a considerable amount of uncertainty in the trucking industry as to the criteria which truck bodies had to meet in order to qualify for the exemption from sales tax under section 8, Part XVII, Schedule III of the Act. On November 25, 1981, the appellant's sales tax consultant, Mr. L.H. Cressman, was informed in a letter from Revenue Canada, written by Mr. William Rompkey, the then Minister of National Revenue, that truck bodies designed to facilitate the carriage or handling of freight, having a gross vehicle mass rating (GVMR) of 7,250 kg or more and meeting the price criterion set out in section 8, Part XVII, Schedule III of the Act, were exempt from sales tax regardless of the fact some may be installed on lighter trucks, i.e., trucks having a GVMR of less than 7,250 kg. This view was confirmed in a letter to the appellant, dated January 28, 1985, from Mr. J.C. Kent of the Tax Interpretations Unit, Department of National Revenue, Customs and Excise. In that letter, Mr. Kent stated that provided the criteria listed above were satisfied, the truck bodies would be exempt "regardless of the fact that some of these bodies may be installed on lighter trucks (i.e., taxable chassis)." After this, Mr. Roussy repeatedly inquired whether this interpretation was correct. He was assured each time by Revenue Canada that it was correct; no advice to the contrary was ever given to him throughout the whole of the period of assessment, i.e., May 1, 1983, to October 31, 1986.

1. R.S.C. 1970, c. E-13; now R.S.C. 1985, c. E-15, s. 81.19.

2. S.C. 1988, c. 56.

When designing its standard service type truck body, the appellant followed the guidelines laid down in a letter to the Canadian Truck Body & Equipment Association, dated October 22, 1981, written by Mr. J.A. Virtue of Revenue Canada, Customs and Excise. That letter stated that in order to qualify for the sales tax exemption, the following five criteria had to be met:

- (1) the truck body must be designed to carry a minimum of 10,000 lbs.;
- (2) it must be designed for permanent installation on a truck having a gross vehicle weight rating of 7,250 kg (16,000 lbs.) or more;
- (3) it must be designed to facilitate the carriage and handling of freight;
- (4) it must have a fair sale price by the Canadian manufacturer or a fair duty-paid value exceeding \$2,000 per unit;
- (5) it must be capable of permanent installation on a truck with a gross vehicle weight rating of 7,250 kg or more.

By Notice of Assessment No. SWO 0800, dated December 19, 1986, Sturdy Truck was informed by Revenue Canada that for the period of assessment, "No tax, penalty, interest or other such sum payable under the Excise Tax Act remains unpaid by you and no amount payable or credit allowable is owed to you." Subsequently, in a letter from Mr. Kent, dated February 12, 1987, the appellant was advised of a complete change in the Department's interpretation. In that letter, Mr. Kent states: "In order for a truck body to be considered as being designed for and capable of permanent installation on a truck chassis with a gross vehicle mass rating of 7 250 kg. (16,000 lbs.) or more, Headquarters has indicated that the manufacturer must demonstrate that a sizeable percentage of that model of truck body is in fact installed on truck chassis over 16,000 lbs. G.V.W.R." This advice contradicted Mr. Kent's letter of January 28, 1985, and Mr. Rompkey's letter of November 25, 1981, neither of which gave any indication that actual installation on trucks with a GVMR of at least 7,250 kg was the test. As a result of this changed interpretation, Sturdy Truck was, by Notice of Assessment No. SWO 1699, dated March 27, 1987, reassessed for tax, penalty and interest in the amount of \$60,243.58, for the period from May 1, 1983, to October 31, 1986. In the Notice of Decision referred to at the outset of these reasons, the respondent rejected the appellant's objection and confirmed the assessment. Hence, this appeal.

THE ISSUE

The issue in this appeal is whether the truck bodies were designed for permanent installation on chassis of trucks designed primarily for the carriage of freight with a GVMR of 7,250 kg or more and, therefore, qualify for exemption from payment of sales tax.

Mr. Roussy testified that Sturdy Truck's intention was to manufacture truck bodies for use on heavy-duty trucks, i.e., those having a GVMR of 7,250 kg or more. The company decided to produce such heavy-duty truck bodies because it felt that the market for that product offered a greater chance of success than did the light-duty market, where competition from American imports was severe. The truck bodies manufactured by Sturdy Truck, according to Mr. Roussy, are from one and one-half to two times as heavy as those manufactured for light trucks.

Mr. Roussy testified that it was for this reason that though capable of being installed on light trucks, the appellant's truck bodies were not entirely suitable for installation on them. The extra weight puts a heavy strain on light trucks and reduces the amount of payload that they can carry.

Mr. Roussy admitted during cross-examination that as a custom manufacturer, Sturdy Truck produces truck bodies which are adapted to meet the specific needs of the particular customer. The company would therefore know, prior to manufacture, whether the customer intended to install the truck body on a light truck or a heavy truck. Mr. Roussy explained that manufacture for installation on light trucks would require certain modifications, but would not require the use of different materials or any alteration in the basic construction of the body, which was intended for use on heavy trucks. Mr. Roussy testified that modifications might also need to be made for installation on heavy trucks, for example, to accommodate the fuel tank and battery box, but as his associate, Mr. Parker, stated, the cost of such modifications tends to be trivial. For instance, the cost of accommodating a fuel tank would be \$50, whereas the truck body could cost anywhere from \$5,000 to \$25,000. In general, it would be more difficult and costly to install the truck body on a light truck than on a heavy truck. Mr. Roussy admitted that the majority of the appellant's sales of truck bodies have been installed on light chassis, but he stated that identical bodies have been installed on heavy trucks. A document entitled "Sales Summary for the Report Year 1985-86" (Exhibit No. B-2, marked confidential), tendered in evidence by the respondent, disclosed that of the 36 truck bodies sold during that period, 33 were installed on light trucks. Mr. Roussy did, however, state that truck bodies identical to those which were installed on light trucks were also installed on heavy trucks.

The sole witness for the respondent was Mr. James Patry, who testified as an expert witness. He is a mechanical engineer and the Vice-President and Principal Engineer of T.E.S. Limited, a company which specializes in vehicle design, component design and peripheral equipment for vehicles. He has had about 22 years experience in vehicle and vehicle component design.

Mr. Patry testified that the dimensions of the appellant's standard truck body design were not well suited for installation on trucks having a GVWR of 7,250 kg or more. In his view, the standard design was too narrow for installation on such trucks, and fairly expensive modifications would have to be made for use on them. He said: "The specific model that is classed ... as the normal model, the PSM 96 SW, single-wheel model, in my mind, from my experience with light and heavy trucks, is a box that will only adequately service a light truck, one less than the 16,000 [pound] capability." He stated that he would not conclude from an examination of the appellant's design drawing, that the product so depicted was designed for installation on heavy trucks. In his view, the vital factor was that the truck body would not require significant modifications to be mounted on a light truck, whereas in almost every case, modifications would be necessary to mount it on a heavy truck. He did, however, concede that the basic design might be quite adequate to do the job for heavy trucks. He explained that there is a tendency for customers to purchase truck bodies that are overbuilt, i.e., heavier than is strictly necessary, because such truck bodies have increased durability. He expressed the view that each design is unique because each truck body is manufactured specially to meet the needs of the particular customer. He said: "A box that will hold a massive amount of weight can be designed, but the real design is the application of the product to the particular vehicle."

The appellant's sales tax consultant, who acted as counsel, advanced two main arguments in support of an exemption.

The first argument was, in essence, that the respondent should be prevented from reassessing. It was noted that Sturdy Truck deliberately shaped its truck body design with reference to the criteria laid down by the respondent. Not only did the appellant rely on the respondent's guidelines and interpretations before and during the subject period, but it did so to its detriment, because it does not now have any means of recovering the allegedly unpaid tax.

The second argument was that the appellant clearly intended, when designing its service type truck body, that it be installed on trucks with a gross vehicle weight rating of 7,250 kg (16,000 lbs) or more. The appellant's sales tax consultant argued that one could infer that the truck bodies were designed for heavy trucks from the fact that some were actually installed on such trucks, and contended that the period of assessment, during which Sturdy Truck had just started manufacturing these truck bodies, was not representative of the sales pattern developed since. Mr. Roussy added that if his company's intention had been to manufacture truck bodies for installation on light trucks, it would not have invested as much money as it did, nor would it have made them so much heavier than truck bodies produced by light duty manufacturers.

In her argument, counsel for the respondent drew attention to the fact that, in the 1985-86 reporting year, 33 of the 36 truck bodies sold by the appellant were installed on light trucks. She argued that since the appellant is a custom design manufacturer, he uses a generic truck body design which he then adapts to the needs of his customers. Therefore, when a customer places an order for a truck body to be installed on a light truck, the truck body which is then manufactured is designed for installation on a light truck. She referred to her expert witness' testimony that the appellant's basic truck bodies, because of their narrow width, were better suited for installation on light trucks than on heavy trucks. She submitted that load capacity, a factor on which the appellant placed a lot of reliance, is only one factor to be considered in deciding whether a truck body was designed for a heavy truck. Similarly, the fact the appellant used the same materials and methods as are used in the manufacture of heavy-duty truck bodies is not conclusive. She argued that in order to determine what a truck body is designed for, one must ascertain the function or purpose for which its manufacturer intended it to be used. For this proposition, she cited the authority of *Peerless Page Industries Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.³ That case dealt with the question whether certain booster-trailers and jeep trailers manufactured by the appellant qualified for an exemption from sales tax on the basis that they were semi-trailers. After finding that the jeep trailers were semi-trailers, the Tariff Board held that the booster trailers also came within the exemption because they operated in the same way and on the same principles as the jeep trailers. On the basis of that case, counsel argued that the truck bodies in question in this appeal were meant to function on light trucks, and thus could be said to be designed for use on such trucks.

3. (1983) 8 T.B.R. 457.

She referred next to *Levy Russell Limited. v. The Deputy Minister of National Revenue for Customs and Excise*.⁴ In that case, the issue was whether certain truck tractors qualified for an exemption from sales tax on the basis that they were highway truck tractors. Counsel noted that in the process of deciding that issue, the Tariff Board examined both design and marketing. She stated that although the appellant in this case represents itself as a manufacturer of heavy truck bodies, its sales records do not support that image. She noted as well that in the *Levy Russell* case, *supra*, the actual or primary use of the subject goods was taken into account as a relevant factor. In this connection, she also cited *GRS Tool and Die Inc. v. The Deputy Minister of National Revenue for Customs and Excise*.⁵ In that case, the issue was whether certain space heaters manufactured by the applicant qualified for a partial exemption from sales tax on the basis that they were designed for use in permanently installed heating systems for buildings, within the meaning of section 1, Part II, Schedule V of the Act. In deciding this issue, the Tariff Board noted that the applicant manufactured, advertised and sold its heating system as a space heater capable of operating as a self-contained unit without the need for ducts or any other apparatus, and concluded on that basis that the subject goods did not qualify for the partial exemption. Counsel for the respondent argued on the basis of this decision that it is necessary to examine the way in which the appellant's truck bodies are installed. She said they cannot be analyzed in isolation.

In connection with the customized design of the appellant's truck bodies, counsel for the respondent referred to the case of *Thomas Skinner & Son Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.⁶ In that case, certain bench lathes and milling machines were held to be designed for use in classroom instruction on the ground that they possessed special features not ordinarily found on such products. Counsel argued on the basis of this case that the customized design of the appellant's truck bodies was a reflection of their intended use.

She submitted, on the authority of *Ocelot Industries Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,⁷ that the appellant's pattern of sales subsequent to the period of assessment was irrelevant. She added that no evidence was introduced before the Tribunal as to what kind of truck bodies have been sold by the appellant since that period.

Concerning the appellant's argument that the Department of National Revenue should be prevented from changing its rulings, she asserted that it is "well-established" that no estoppel lies against the Crown. The case of *Stickel v. Minister of National Revenue*⁸ was referred to in this connection. That case actually holds that an estoppel cannot be raised against the Minister of National Revenue on the basis of representations made in an information bulletin. She buttressed her argument by referring to section 51.1 of the Act⁹ which authorizes the Minister, at any time, to reassess a taxpayer for any tax, penalty and interest, notwithstanding any previous assessment covering the same time period or matter. She argued that the Department is not bound by its

4. (1983) 8 T.B.R. 622.

5. (1981) 7 T.B.R. 313.

6. (1984) 9 T.B.R. 396.

7. (1983) 8 T.B.R. 763.

8. (1972) 27 D.L.R. (3d) 721 (F.C., Trial Division), rev'd on other grounds, 73 D.T.C. 5178 (C.A.), aff'd 74 D.T.C. 6268 (S.C.C.).

9. Now section 81.1.

previous interpretations or rulings with regard to this assessment. She also submitted that the Department can only make rulings based on the facts it has before it and if new facts come to light, the Department is entitled to make a new ruling and have a new assessment.

She concluded her submissions by stating that there was nothing in the evidence adduced on behalf of the appellant to support the argument that the truck bodies were designed for installation on heavy trucks; the fact the truck bodies were capable of being so installed, after modifications were made, was insufficient to qualify them for the exemption.

DECISION

The sole issue for decision is whether the truck bodies, the subject of this appeal, qualify for an exemption from sales tax on the basis that they were designed for permanent installation on tax-exempt goods, within the meaning of section 8, Part XVII, Schedule III of the Act.

The Tribunal has come to the conclusion that the appellant's truck bodies, designed for installation on light trucks, do not qualify for that exemption. In the Tribunal's view, such factors as the weight and load-bearing capability of the appellant's truck bodies, the fact that they were manufactured using the same materials and methods as are used in the manufacture of heavy-duty truck bodies and the fact that some of the truck bodies sold by the appellant during the period of assessment were actually installed on trucks having a GVWR in excess of 7,250 kg are not, by themselves, conclusive.

The appellant is a custom manufacturer which produces, not for inventory, but for the specific needs of the individual customer. The evidence disclosed at the hearing showed that Sturdy Truck has developed, for its truck bodies, a generic design that is modified to meet the customer's particular requirements. A distinction should be made between the specific design and the generic design of the truck bodies: a body that will hold a massive amount of weight can be designed but the final design of a specific truck body is to ensure the proper application of the product to the particular vehicle.

The Tribunal considers that the deciding factor in the present case is that the manufacturer must design each truck body to take into account its ultimate use. In *Northern Alberta Institute of Technology v. The Deputy Minister of National Revenue for Customs and Excise*,¹⁰ the Tariff Board stated that:

... the term "designed for use" relates not to a conception in the mind of the importer or user but rather relates to a deliberate intention in the mind of the producer of the equipment as to the nature of its ultimate use.

In the Tribunal's view, when a customer orders a truck body for use on a light truck, the intention in the mind of the appellant, when it manufactures the truck body, must surely be to produce a truck body which is designed for use on that particular truck. The appellant's own evidence indicated that the majority of its truck bodies were designed for installation on light trucks: 33 of the 36 truck bodies sold during the period of assessment were installed on light trucks. At the time of the construction, the appellant knew that the truck bodies were intended to

10. (1984) 9 T.B.R. 367, 370.

be used on light trucks. Furthermore, in many cases, its truck bodies were too narrow for installation on heavy trucks. The evidence disclosed that when an order was placed for a truck body to be installed on a light truck, fewer modifications needed to be made to its generic design, whereas more modifications were necessary for installation on heavy trucks, as stated by the expert witness. On the basis of these considerations, the Tribunal concludes that the truck bodies in issue were not designed for permanent installation on trucks having a GVWR of 7,250 kg or more.

Concerning the question of estoppel, the Tribunal has come to the conclusion that this argument must fail, on the authority of the *Stickel* case (*supra*) and on the basis that, pursuant to section 51.1 of the Act, the Minister can reassess the taxpayer at any time.

The Tribunal is convinced that the appellant, in good faith, based its generic design decision on the interpretations and the guidance of Revenue Canada and carried on business on that basis for a number of years until it was reassessed. We consider it most unfortunate that the appellant was led by Revenue Canada to believe that a generic design of its service truck body, adaptable to a wide range of truck chassis sizes, could escape taxation. The Tribunal regrets that it is not able to provide relief to the appellant.

CONCLUSION

For the foregoing reasons, the Tribunal concludes that the truck bodies manufactured by the appellant and installed on light trucks do not qualify for the exemption from sales tax. The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Member