CANADIAN INTERNATIONAL TRADE TRIBUNAL

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, September 20, 1990

Appeal No. AP-89-030

IN THE MATTER OF an application heard March 23, 1990, under section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated December 16, 1988, under section 63 of the *Customs Act*.

BETWEEN

H.E. WAKELIN **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal declares that the Ford Taurus in issue (serial number 1FABP52U5JG129187) imported through the port of entry at Oungre, Saskatchewan, on June 25, 1988, should be classified under tariff item 9807.00.00 as settlers' effects.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Michèle Blouin
Michèle Blouin
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-89-030

H.E. WAKELIN **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

Customs Tariff - Tariff classification - Whether appellant settler or former resident.

The issue in this case involves the tariff classification of a 1988 Ford Taurus (serial number 1FABP52U5JG129187) valued at CAN$18,320.61 that the appellant imported into Canada. The appellant claims that the vehicle can be considered as "Goods ... imported by a settler ... " under tariff item 9807.00.00 and, thus, imported duty-free. The respondent considers the vehicle to fall under tariff item 9805.00.00 as "Goods imported by ... a former resident of Canada returning to Canada to resume residence therein ... " and, thus, subject to duty.

Between 1974 and 1978, the appellant, a minister with the Christian Church (Disciples of Christ), came to Canada with his wife to practice his vocation. Their goods were imported into Canada duty-free as settlers' effects. Mr. Wakelin and his wife returned to the United States, but, in 1988, having been granted landed immigrant status in Canada, came back to Canada to retire. Their goods were imported as goods of a former resident, and the appellant's vehicle was assessed value for duty. This was done on an administrative policy that restricted settlers' effects to those brought by a person intending to set up residence in Canada for a period greater than 12 months for the first time.

***Held**: The appeal is allowed. The Tribunal declares that the appellant's goods should be classified as settlers' effects under tariff item 9807.00.00. The word "settler" has not been defined in either the applicable legislation or regulations. According to principles of statutory construction, the appellant is a settler, as that word is used in its common and ordinary sense. Furthermore, tariff item 9807.00.00 accurately reflects the kind of "commitment" to reside in Canada that the appellant seeks upon entry into this country.*

Place of Hearing:	*Edmonton, Alberta*
Date of Hearing:	*March 23, 1990*
Date of Decision:	*September 20, 1990*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *W. Roy Hines, Member* *Michèle Blouin, Member*
Clerk of the Tribunal:	*Janet Rumball*

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Appearances:	*Halsey E. Wakelin, for the appellant* *Micheal Civaglia, for the respondent*
Cases Cited:	*Stubart Investments Limited v. Her Majesty The Queen, [1984] 1 S.C.R. 536; Lord v. Colvin (1859), 4 Drew 366; Wadsworth v. McCord (1886), 12 S.C.R. 466.*
Statutes and Regulations Cited:	*Customs Act, R.S.C., 1985, c. 1 (2nd Supp.), s. 67; Customs Tariff, R.S.C., 1970, c. C-41, as amended by S.C. 1987, c. 29; Customs Tariff, S.C. 1987, c. 49, s. 10; S.C. 1989, c. 18, s. 15; General Rules For The Interpretation Of The Harmonized System, r. 1; Canadian Rules, r. 1; Schedule I, Chapter 98, Notes 1, 2, 3 and 7(c)(i); Tariff items 9805.00.00 and 9807.00.00; Settlers' Effects Acquired with Blocked Currencies Remission Order, C.R.C., c. 790, as amended by SI/78-118; Financial Administration Act, R.S.C., 1970, c. F-10; Settlers' Effects Regulations, SOR/67-158, as amended; General Amendment Order (Customs Tariff, Ministerial), SOR/88-59; Definition of "Settler" for the Purpose of Tariff Item No. 9807.00.00 Regulations, SOR/90-226.*
Memorandum Cited:	*Memorandum D2-2-1 (Settlers' Effects Tariff Item 9807.00.00).*
Dictionaries Cited:	*Le Grand Robert de la langue française, 1986; The Oxford English Dictionary, Clarendon Press, 1989; Black's Law Dictionary, West Publishing Co., 1979 (5th ed.).*

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-89-030

H.E. WAKELIN **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
W. ROY HINES, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

The issue in this case involves the tariff classification of a 1988 Ford Taurus (serial number 1FABP52U5JG129187) valued at CAN$18,320.61 that the appellant imported into Canada. The appellant claims that the vehicle can be considered as "Goods ... imported by a settler ... " under tariff item 9807.00.00. The respondent considers the vehicle to fall under the heading "Goods imported by ... a former resident of Canada returning to Canada to resume residence therein ... " under tariff item 9805.00.00. Goods imported by a settler are duty-free. While goods imported by a former resident under tariff item 9805.00.00 are also entitled to duty-free entry, there is an exception to this rule. If an article is assessed a value for duty at more than CAN$10,000, then, pursuant to Note 7(c)(i) of Chapter 98 of the *Customs Tariff*, duty must be paid on that portion of the value for duty in excess of CAN$10,000. Because the imported vehicle was classified by the respondent under tariff item 9805.00.00, duty was levied on the vehicle.

FACTS

The facts in this case have been gathered from the record and from the testimony of Reverend H.E. Wakelin and Mr. Dave Choquette, a senior program officer with the Department of National Revenue for Customs and Excise (the Department). The appellant was born in Saskatchewan in 1912. In September 1929, he moved to the United States to commence training for the ministry. In 1932, the appellant married a native of Tennessee. Reverend Wakelin became an ordained minister with the Christian Church (Disciples of Christ) in May 1933 and moved back to Canada with his wife shortly after that time.

The appellant was in the ministry in Canada until 1953, at which time he moved to Iowa. He became a citizen of the United States in May 1960.

The appellant stayed in Iowa until 1974. In April of that year, he and his wife returned to Canada to minister in West Lorne, Ontario. Both the appellant and his wife were granted landed immigrant status in Canada and were allowed to import their personal belongings duty-free, including their vehicle, into Canada as settlers' effects. The Wakelin family returned to Iowa in May 1978, but ministered in Canada between April 1986 and May 1987 under a work permit.

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In the summer of 1987, while on vacation with their daughter who lives in the community of Red Deer, Alberta, the appellant and his wife decided to apply for landed immigrant status in Canada. Reverend Wakelin and his wife chose this community as the place where they wished to retire.

On September 22, 1987, the appellant applied to the Canadian Consulate General (the Consulate) in Minneapolis, Minnesota, for landed immigrant status. In his letter of application, the appellant wrote:

> *My wife and I have just returned from summer vacation with our daughter based in Red Deer, Alberta. This has helped us confirm our decision to make application for permanent residence in Canada.*

The covering letter to the Consulate indicated that the appellant and his wife had previously been granted landed immigrant status in 1974.

In October 1987, Mr. and Mrs. Wakelin visited the Consulate for an immigration interview with a consular officer. According to the appellant, the officer assured the Wakelins that, as landed immigrants, they could import their personal effects duty-free, including a new vehicle that the Wakelins had told the officer they wished to purchase.

On January 6, 1988, the Consulate notified the Wakelins that they appeared to fully comply with all Canadian immigration requirements, but that "the examining officer at the Canadian port-of-entry ... has the final responsibility in determining your admissibility for permanent residence." Given this response, Reverend Wakelin and his wife traded in their old vehicle and jointly purchased a new (at that time) Ford Taurus, the vehicle in issue, on April 18, 1988. They also commenced the building of their retirement home in Red Deer.

The appellant and his wife packed up all their personal effects, placed them in a rented truck and arrived at the Canadian port of entry at Oungre, Saskatchewan, on June 25, 1988. There, they entered as landed immigrants. Their personal effects were imported into Canada by customs officials under tariff item 9805.00.00. All of their personal belongings were imported duty-free with one exception. They were required to pay duty on the Ford Taurus on that portion of the value of the vehicle in excess of CAN$10,000. Customs duty was calculated on the vehicle at the rate prescribed in tariff item 8703.23.00.93 (motor cars of a cylinder capacity greater than 1,500 cc, but less than 3,000 cc and with an interior volume greater than 2.8 m^3, but less than 3.1 m^3). The amount assessed totalled $1,782.01. The appellant paid the amount.

Surprised at having been assessed duty on the vehicle, in view of the assurances of duty-free entry of goods that the appellant claimed he received from the Consulate in Minneapolis, Reverend Wakelin sought redetermination by the Department of the customs officer's classification of the goods under tariff item 9805.00.00. On September 23, 1988, the appellant's request was denied. According to Department officials, when the appellant and his wife arrived in Canada in 1974, the Department considered them to be settlers and the Wakelins' personal belongings were imported as settlers' effects. The Department said further that, having been considered a settler in 1974 and having resided in Canada between 1974 and 1978, the appellant could now be considered as a former resident and, as such, could only import his belongings under tariff item 9805.00.00.

Mr. Choquette testified that the decision of Department officials was based on an administrative policy. This policy stated that a person could be considered a settler under tariff item 9807.00.00 and, thus, could import goods as settlers' effects under this tariff item if, and only if, the person was setting up residence in Canada for the first time. As the appellant had resided in Canada between 1974 and 1978, administrative policy indicated that this previous residence disqualified the appellant from importing goods as settlers' effects.

Mr. Choquette further testified that, when the appellant entered Canada, the administrative policy was based on the definition of the word "settler" as found in the *Settlers' Effects Acquired with Blocked Currencies Remission Order*[1] enacted under the *Financial Administration Act*.[2] That order defined the word "settler," in part, as "any person who enters Canada with the intention of establishing for the first time a residence for a period exceeding twelve months.... " On March 16, 1989, the definition was incorporated into Memorandum D2-2-1, Settlers' Effects Tariff Item 9807.00.00.

The appellant appealed the Department's determination to the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), but, on December 16, 1988, the Deputy Minister confirmed the determination given by Department officials. After consulting with his local Member of Parliament and on his advice, the appellant filed an appeal with the Tribunal from the Deputy Minister's decision.

ISSUE

The issue in this appeal is the tariff item under which the vehicle in issue should be classified. Is it, as the appellant claims, tariff item 9807.00.00 as "Goods ... imported by a settler for the settler's household or personal use, if actually owned by and in the possession and use of the settler prior to the settler's arrival in Canada ... ? " Or is it, as the respondent claims, tariff item 9805.00.00 as "Goods imported ... by a former resident of Canada returning to Canada to resume residence therein after having been a resident of another country for a period of not less than one year ... ? " Both parties agree that the vehicle can be considered "goods" within the meaning of the tariff items in issue. Thus, the central question in this appeal is whether the appellant is a former resident returning to resume residence or a settler who has arrived in Canada.

LEGISLATION

When the appellant entered Canada with the vehicle in issue, the relevant provisions of the *Customs Tariff*[3] read as follows:

> *10. The classification of imported goods under a tariff item in Schedule I shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in that Schedule.*

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1. C.R.C., c. 790, as amended by SI/78-118.
2. R.S.C., 1970, c. F-10.
3. S.C. 1987, c. 49.

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

Classification of goods in the Nomenclature shall be governed by the following principles:

1.The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes ...

CANADIAN RULES

1.For legal purposes, the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items ... and, mutatis mutandis, to the above Rules.... For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

SCHEDULE I

Chapter 98

SPECIAL CLASSIFICATION PROVISIONS

1.... Articles which are described in any heading or subheading of this Chapter are classifiable in said heading or subheading if the conditions and requirements thereof and of any applicable regulations are met.

2.For the purpose of heading No. 98.02, 98.03, 98.04, 98.05, 98.06 or 98.07, the Governor in Council may make regulations defining the terms "resident", "former resident", "temporary resident", "baggage", "conveyance" and "settler".

3.Goods entitled to be classified under heading No. ... 98.05 shall be exempt from all duties, notwithstanding the provisions of this or any other Act of Parliament.

...

7.For the purpose of heading No. 98.05:

...

(c)Chapter Note 3 shall apply except that:

(i)any article which was acquired after March 31, 1977 by the person claiming the exemption hereunder and which has a value for duty as determined under the Customs Act of more than $10,000 is subject to the duties as otherwise prescribed on the amount of the value for duty in excess of $10,000 ...

Customs Tariff

9805.00.00 *Goods imported by a member of the Canadian Forces, an employee of the Canadian Government, or by a former resident of Canada returning to Canada to resume residence therein after having been a resident of another country for a period of not less than one year, or by a resident returning after an absence from Canada of not less than one year, and acquired by that person for personal or household use and actually owned abroad by and in the possession and use of that person for at least six months prior to that person's return to Canada*

9807.00.00 *Goods, as defined by regulations made by the Minister, imported by a settler for the settler's household or personal use, if actually owned by and in the possession and use of the settler prior to the settler's arrival in Canada, under such regulations as the Minister [of National Revenue] may make*

ARGUMENTS

The appellant supported his position by arguing that he was unfairly assessed customs duty on the vehicle in issue. He made this argument based on the following reasons. First, the appellant claims that both he and his wife were given assurances by the consular officer in Minneapolis that they would not have to pay duty on the new vehicle. Second, the appellant claims that neither he nor his wife was ever informed that they would be considered former residents upon their return to Canada. The appellant argued that, if he and his wife had known that they would have been classified as former residents and, thus, been required to pay duty on the new vehicle, they never would have traded in their old one and purchased the vehicle in issue in the United States.

The respondent's position is supported on two grounds. First, the respondent denies that the appellant was given incorrect advice by the consular officer. However, even if the appellant was misinformed, such advice cannot alter legislation enacted by Parliament. The appellant must comply with the legislation regardless of the incorrect advice. The respondent relies on the Supreme Court of Canada decision in *The Queen v. Laboratoires Marois Limitée.*[4]

Second, the respondent, relying on the Department's definition of the word "settler," argued that the appellant could not be considered as such because he was not setting up, for the first time, a residence for a period of at least 12 months. Having been a previous resident of Canada, the respondent argued, the appellant should be considered a former resident, and the appellant's vehicle should be classified as goods imported by a former resident.

Further, the respondent contended that, while the administrative policy is not binding on the Tribunal, the Deputy Minister has used the definition of "settler" as a means of providing guidelines in the administration of tariff item 9807.00.00. As such, tariff item 9807.00.00 should be interpreted in a manner consistent with this policy.

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4. 58 D.T.C. 1116.

FINDING OF THE TRIBUNAL

From an examination of the evidence, the case law and the applicable legislative and regulatory scheme, the Tribunal considers that the Ford Taurus in issue should be classified under tariff item 9807.00.00 as goods imported by a settler. The respondent's position makes it quite clear that the only reason the appellant was not eligible to be considered a settler, and thus, to have his personal effects, including the vehicle in issue, classified under tariff item 9807.00.00, was that the appellant had previously been a resident of Canada for at least 12 months. As the respondent stated in his factum, "The Appellant was not a 'settler' when he came to Canada in June, 1988, because he was not setting up residence in Canada for the 'first time' as required by tariff item 9807.00.00." (Emphasis added) The Tribunal does not accept this position for several reasons.

First, tariff item 9807.00.00 does not contain words stating that a settler only includes those seeking to establish residence in Canada for the first time. Second, there is the regulatory scheme defining the word "settler" for purposes of tariff item 9807.00.00. The word "settler" is not defined in tariff item 9807.00.00; nor was it defined in predecessor tariff items dealing with settlers' effects. For example, the immediate predecessor of the current tariff item was numbered 70505-1 and read, in part, as follows:

> *Goods, as defined by regulations made by the Minister [of National Revenue], imported by a settler for his household or personal use, if actually owned by the settler and in his possession and use prior to his arrival in Canada, under such regulations as the Minister may prescribe*[5]

However, definitions of the word "settler" enacted for the purpose of interpreting the tariff item dealing with settlers' effects have been found in regulations. Thus, the Minister of National Revenue (the Minister) enacted regulations defining the word "settler," as that word appeared in tariff item 70505-1. This was done in the *Settlers' Effects Regulations*[6] that defined "settler" as follows:

> *"settler" means any person coming into Canada with the intention of establishing for the first time a residence in Canada for a period exceeding 12 months.*

However, on December 31, 1987, the Minister revoked this definition.[7] This repeal was made effective January 1, 1988. On that date, tariff item 9807.00.00 came into force. The *Customs Tariff* states, pursuant to Note 2 of Chapter 98, that only the Governor in Council can make regulations defining, among other things, the word "settler" as it appears in tariff item 9807.00.00.

This, the Governor in Council did on April 5, 1990. In the *Definition of "Settler" for the Purpose of Tariff Item No. 9807.00.00 Regulations*,[8] the word "settler" was defined as follows:

> *2. For the purpose of tariff item No. 9807.00.00 of Schedule I to the Customs Tariff, "settler" means any person who enters Canada with the intention of*

5. *Customs Tariff*, R.S.C., 1970, c. C-41, as amended by S.C. 1987, c. 29.
6. SOR/67-158, as amended.
7. *General Amendment Order (Customs Tariff, Ministerial)*, SOR/88-59.
8. SOR/90-226.

establishing, for the first time, a residence for a period of not less than 12 months, but does not include a person who enters Canada in order to reside in Canada for the purpose of
(a) employment for a temporary period not exceeding 36 months; or
(b) studying at an institute of learning.

While the Governor in Council was empowered to apply the regulation retroactively to January 1, 1988,[9] he did not do so. Between the period January 1, 1988, and April 4, 1990, there were no regulations defining the word "settler" for the purposes of tariff item 9807.00.00. Thus, when the appellant entered Canada in June 1988, he could not be disqualified, on the basis of regulations, from entry as a settler under tariff item 9807.00.00 because he had previously resided in Canada for a period exceeding 12 months.

As there were no definitions of the word "settler" when the appellant entered Canada, the Tribunal must apply principles of statutory construction to determine whether the appellant was a settler within the meaning of tariff item 9807.00.00. In the Supreme Court of Canada decision in *Stubart Investments Limited v. Her Majesty The Queen*,[10] a case involving federal income tax, Mr. Justice Estey made the following comments, at page 578, regarding the appropriate principles to be applied:

While not directing his observations exclusively to taxing statutes, the learned author of Construction of Statutes, 2nd ed, (1983), at 87, E A Dreidger, put the modern rule succinctly:

Today there is only one principle or approach, namely, the words of an Act are to read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and intention of Parliament.

In the Tribunal's view, Parliament's intention regarding the scope of the word "settler" is made amply clear in the equally authoritative French language version of tariff item 9807.00.00, which reads as follows:

Marchandises, définies par les règlements établis par le Ministre, importées par <u>un immigrant</u> pour son usage domestique ou personnel, si réellement elles lui ont appartenu, ont été en sa possession et lui ont servi avant son arrivée au Canada <u>pour prendre résidence permanente</u>, conformément aux règlements que peut prendre le Ministre (Emphasis added)

(*Goods, as defined by regulations made by the Minister, imported by <u>a settler</u> for the settler's household or personal use, if actually owned by and in the possession and use of the settler prior to the settler's arrival in Canada, under such regulations as the Minister may make)* (Emphasis added)

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9. *Customs Tariff*, S.C. 1987, c. 49, as amended by S.C. 1989, c. 18, s. 15.
10. [1984] 1 S.C.R. 536.

Examining the word "*immigrant*" in its grammatical and ordinary sense, the Tribunal notes the following dictionary definition:

Le Grand Robert de la langue française[11]

Immigrant *Qui immigre dans un pays ou qui y a immigré récemment.*

(Immigrant (Translation)) A person who migrates to a country or who has recently migrated.)

Thus, central to the word "*immigrant*" within the meaning of tariff item 9807.00.00 is the idea of a person coming from one country, in which the person has previously lived, to Canada to establish a permanent residence.

The common and ordinary meaning of the word "settler" in the English version of tariff item 9807.00.00 is consistent with this interpretation of Parliament's intention. This is indicated in the following dictionary definitions:

The Oxford English Dictionary[12]

Settler
2. ***a.*** *One who settles in a new country; a colonist ...*
b. *gen. One who settles in a place as a resident ...*
5. ***... settler's effects*** *Canad., goods brought into the country by an immigrant for his personal use that are exempt from import duty ...*

Settle
11. ***a.*** *Of persons: To cease from migration and adopt a fixed abode; to establish a permanent residence, take up ones abode ...*

New
4. ***a.*** *Other than the former or old; different from that previously existing, known, or used ...*
c. *Of places: Different from that previously inhabited or frequented ...*

The above definitions indicate that a settler has the common and ordinary meaning of one who migrates to a country, different from that previously inhabited, for the purpose of establishing a permanent residence.

In short, limiting the scope of the words "settler" and "*immigrant*" in tariff item 9807.00.00 to those setting up, for the first time, residence in a country for a specific period of time, does not accord with the common and ordinary meaning of the word "*immigrant*" as found in the French version of the tariff item or the common and ordinary meaning of the word "settler" as found in the English version of the tariff item. And, in view of the fact that neither the English nor the French version of tariff item 9807.00.00 contains words of such limitation, the Tribunal cannot accept that a person is disqualified from inclusion under this category merely because he

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11. 1986.
12. 1989, Clarendon Press.

has previously been a resident of Canada for a specified period of time. Furthermore, in the absence of regulations enacted by the Governor in Council indicating otherwise, the Tribunal considers that disqualifying an individual on this ground alone does not accord with the scheme of the *Customs Tariff*.

The Tribunal considers that one of the ways Parliament has chosen to distinguish former residents in tariff item 9805.00.00 from settlers in tariff item 9807.00.00 is on the basis of a person's "commitment" to reside in Canada. Tariff item 9805.00.00 refers to former residents returning to Canada to resume residence. On the other hand, tariff item 9807.00.00 refers to persons arriving in Canada with the intention of establishing permanent residence. That is, tariff item 9807.00.00 refers to a kind of residence that is more lasting or enduring than mere residence.

Indeed, the Tribunal considers that the kind of residence mentioned in tariff item 9807.00.00 is akin to that found in the common law definition of domicile of choice. In the case of *Lord v. Colvin*,[13] Kindersley, V.C. provided the following definition of this type of domicile:

> *That place is properly the domicile [of choice] of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected, or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home.*

The relationship between domicile and residence was noted by Chief Justice Ritchie in the Supreme Court of Canada decision in *Wadsworth v. McCord*[14] wherein he stated:

> *Domicile and residence are two distinct things ... domicile imports an abiding and permanent home, and not a mere temporary one; there must be the factum of residence and the animus manendi [the intention of remaining or the intention of establishing a permanent residence*].[15]

In view of the foregoing, it is clear that, in making a distinction between permanent residence and residence, Parliament sought to include within the ambit of tariff item 9807.00.00 those seeking to establish a more enduring kind of residence in Canada than that typified by mere residence. However, acceptance of the respondent's limitation on the scope of the words "settler" and "*immigrant*" would mean that those individuals coming to Canada to establish a permanent home would be precluded from inclusion under tariff item 9807.00.00 simply because they had previously resided in Canada for a period greater than 12 months. Furthermore, they would be so excluded even though they may not have intended, during the first time they resided in Canada, to make this country their permanent home.

In the Tribunal's view, the recital of the facts in this case makes it clear that the appellant falls within the ordinary and common meaning of the word "settler" in tariff item 9807.00.00 and that this tariff item accurately reflects the kind of "commitment" to reside in Canada that the appellant seeks upon entry into this country. Both Mr. Wakelin and his wife had left the United

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13. (1859), 4 Drew 366, at p. 376.
14. (1886), 12 S.C.R. 466, at pp. 478-479.
15. Black's Law Dictionary, West Publishing Co., 1979 (5th ed.).

States to come to Canada with the intention of making Red Deer their permanent residence. They had brought all their personal belongings with them. They had come to Canada for the expressed purpose of retiring in Red Deer. Toward this end, they built themselves a retirement home in that community. Thus, Reverend Wakelin is not returning merely to resume residence in Canada for a temporary period of time. Rather, the appellant is seeking to establish a more enduring residence; one that is intended to continue without change. In view of the foregoing, and in the absence of regulations defining the word "settler" at the time that the appellant entered Canada in June 1988, the Tribunal considers that the appellant is a settler within the meaning of tariff item 9807.00.00 and, as such, the car in issue should be classified under that tariff item.

CONCLUSION

The appeal should be allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Michèle Blouin
Michèle Blouin
Member