SUPREME COURT OF CANADA

CITATION: Gladstone *v.* Canada (Attorney General), [2005] 1 S.C.R. 325, 2005 SCC 21

DATE: 20050421
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BETWEEN:

Attorney General of Canada
Appellant
v.
Donald Gladstone and William Gladstone
Respondents

CORAM: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

REASONS FOR JUDGMENT: (paras. 1 to 30): Major J. (McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ. concurring)

Gladstone *v.* Canada (Attorney General), [2005] 1 S.C.R. 325, 2005 SCC 21

Attorney General of Canada *Appellant*

v.

Donald Gladstone and William Gladstone *Respondents*

Indexed as: Gladstone *v.* Canada (Attorney General)

Neutral citation: 2005 SCC 21.

File No.: 30137.

2005: February 9; 2005: April 21.

Present: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

on appeal from the court of appeal for british columbia

Fisheries — Return of things not forfeited — Payment of interest — Return of proceeds from sale of fish seized pursuant to Fisheries Act after proceedings stayed — Proceeds returned without interest — Whether Crown owed interest on proceeds held pending outcome of litigation — Fisheries Act, R.S.C. 1985, c. F-14, s. 73.1.

In 1988, the Department of Fisheries and Oceans lawfully seized and sold herring spawn on kelp which the respondents had harvested allegedly in violation of the *Fisheries Act*.

The Crown held the proceeds pending the outcome of litigation. The respondents, who were aboriginal, were convicted of offences under the Act but this Court subsequently ordered a new trial. In 1996, the Crown stayed the proceedings and paid the net proceeds to the respondents. The British Columbia Supreme Court dismissed the respondents' claim that the Crown must also pay interest or some other additional amount. The Court of Appeal reversed the decision, holding that in this case the Crown owed a fiduciary duty as an "administrator" to pay interest on the money.

Held: The appeal should be allowed.

The Crown did not owe interest or any other additional amount. The *Fisheries Act* constitutes a complete code dealing with the disposition and return of seized property, and this code imposes no obligation on the Crown to pay interest or any other amount in addition to what is set out in s. 73.1. [1] [12]

Even if the proceeds of sale were "special purpose" funds under the *Financial Administration Act*, the Crown still had the discretion to allow interest under that Act and did not do so. [15]

A claim based on unjust enrichment is not available in this case because the *Fisheries Act* provides a juristic reason for any incidental enrichment which may have occurred in its operation. [22]

Nor did the Crown owe the respondents a fiduciary duty in this case. The issue, as framed by the parties, did not raise the matter of aboriginal status. Even if it had, the situation in this case did not give rise to a fiduciary relationship. No source imposed an obligation on the Crown to act for the respondents' benefit. [23] [27]

Finally, the Crown did not hold the proceeds as a trustee. The statutory scheme created by the *Fisheries Act* dispels any suggestion that the Act intended to create a trust relationship through its operation. [28]

Cases Cited

Applied: *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56; *Garland v. Consumers' Gas Co.*, [2004] 1 S.C.R. 629, 2004 SCC 25; **considered:** *Zaidan Group Ltd. v. London (City)*, [1991] 3 S.C.R. 593, aff'g (1990), 64 D.L.R. (4th) 514; **distinguished:** *Manitoba v. Air Canada* (1978), 86 D.L.R. (3d) 631, aff'd [1980] 2 S.C.R. 303; *Authorson v. Canada (Attorney General)* (2002), 58 O.R. (3d) 417, rev'd on other grounds, [2003] 2 S.C.R. 40, 2003 SCC 39; **referred to:** *R. v. Gladstone*, [1996] 2 S.C.R. 723; *Pettkus v. Becker*, [1980] 2 S.C.R. 834; *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762; *Reference re Goods and Services Tax*, [1992] 2 S.C.R. 445; *Mack v. Canada (Attorney General)* (2002), 60 O.R. (3d) 737; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73; *Guerin v. The Queen*, [1984] 2 S.C.R. 335; *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377; *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574.

Statutes and Regulations Cited

Financial Administration Act, R.S.C. 1985, c. F-11, ss. 2 "public money" (*d*), 21(2).

Fisheries Act, R.S.C. 1970, c. F-14, s. 58(1)(*b*), (3), (4).

Fisheries Act, R.S.C. 1985, c. F-14 [am. 1991, c. 1], ss. 70(3), 71(1), (2), (3), 71.1(2), 73.1, 73.2, 79.4(1), (3).

APPEAL from a judgment of the British Columbia Court of Appeal (Prowse, Huddart and Low JJ.A.) (2003), 21 B.C.L.R. (4th) 247, 189 B.C.A.C. 129, 233 D.L.R.

(4th) 629, [2004] 3 W.W.R. 424, [2003] B.C.J. No. 2600 (QL), 2003 BCCA 614, reversing a judgment of Taylor J., [2002] B.C.J. No. 2360 (QL), 2002 BCSC 1447. Appeal allowed.

S. David Frankel, Q.C., and *Brian A. McLaughlin*, for the appellant.

Marvin R. V. Storrow, Q.C., and *Peter L. Rubin*, for the respondents.

The judgment of the Court was delivered by

1 MAJOR J. — The issue in this appeal, on an agreed statement of facts, is whether the appellant Crown in Right of Canada owes interest, or some other amount, to the respondents on the basis that funds belonging to the respondents were held by the Crown during a period of litigation as the result of a legal seizure. I conclude that the Crown does not owe interest, or any other additional amount in this case. The appeal is allowed without costs.

I. Facts

2 On April 28, 1988, the respondents, Donald and William Gladstone, were arrested for attempting to sell 4,200 lbs. of herring spawn on kelp ("spawn") in violation of the *Fisheries Act*, R.S.C. 1970, c. F-14. On June 9, 1988, the Department of Fisheries and Oceans, having lawfully seized the spawn, sold it pursuant to s. 58(3) of the *Fisheries Act* for the net sum of $137,079.50. This was deposited to the credit of the Receiver General of Canada at the Bank of Canada pursuant to s. 58(4) of the *Fisheries Act* and became part of the Consolidated Revenue Fund.

3 The respondents were convicted. However, a new trial was ordered by this Court: *R. v. Gladstone*, [1996] 2 S.C.R. 723. On December 13, 1996, the Crown decided against a new trial

and stayed proceedings. On December 19, 1996, the net proceeds of $137,079.50 were paid to the respondents but the appellant refused to pay interest, or any other additional amount.

4 The respondents do not dispute the lawfulness of the seizure or the sale but submit that interest or some other additional amount is payable to them on the basis that the Crown had the use of the proceeds during the time of seizure. The parties have agreed that the amount in question is $132,000.

II. Judicial History

5 There was divided success in the British Columbia courts. The trial judge dismissed the claim holding that the *Fisheries Act* is a complete code dealing with the disposition and return of seized property. The seizure was lawful and the money was properly returned as soon as was required. See [2002] B.C.J. No. 2360 (QL), 2002 BCSC 1447. The Court of Appeal reversed this decision holding that in these circumstances the Crown owed a fiduciary duty as an "administrator" to pay interest on the money. According to the Court of Appeal, the seizure and sale was effectively a "loan" upon which interest must be paid. The aboriginal status of the claimants was irrelevant. See (2003), 21 B.C.L.R. (4th) 247, 2003 BCCA 614.

III. Relevant Statutory Provisions

6 The relevant provisions of the 1970 *Fisheries Act* were re-enacted as part of the *Fisheries Act*, R.S.C. 1985, c. F-14. The parties referred to the 1970 Act as governing the seizure and sale, and the 1985 Act for subsequent events. They agree that any amendments do not affect the issues on appeal. The fish were seized pursuant to s. 58(1)(*b*) and sold pursuant to s. 58(3) of the 1970 Act. At issue here is s. 73.1 of the 1985 Act, which governs the return of the fish or their

proceeds. For the purposes of this appeal, all further references are to the 1985 Act as amended by S.C. 1991, c. 1:

> **73.1** [Return of things not forfeited] (1) Subject to subsection (2), any fish or other thing seized under this Act, or any proceeds realized from its disposition, that are not forfeited to Her Majesty under section 72 shall, on the final conclusion of the proceedings relating to the fish or thing, be delivered to the person from whom the fish or thing was seized.
>
> (2) [Exception] Subject to subsection 72(4), where a person is convicted of an offence relating to any fish or other thing seized under this Act and the court imposes a fine but does not order forfeiture,
>
> (*a*) the fish or thing may be detained until the fine is paid;
>
> (*b*) it may be sold under execution in satisfaction of the fine; or
>
> (*c*) any proceeds realized from its disposition may be applied in payment of the fine.

IV. Analysis

7 The appellant Crown submits that the *Fisheries Act* is a complete code for the purposes of returning things seized under the Act. The Act expressly provides for the return of any proceeds realized on the sale of seized property, but it does not provide for interest or any other amount to be paid. It argues that the aboriginal status of the respondents was not raised in the issue as framed by the parties and is irrelevant in the general application of the Act. The appellant also relies upon the common law rule that the Crown is not required to pay interest unless expressly provided by statute or contract.

8 The respondents submit that the *Fisheries Act* is not a complete code. They argue that the Crown must pay interest, or some other additional amount. They submit that the proceeds are special purpose funds within the meaning of s. 2 “public money” (*d*) of the *Financial Administration Act*, R.S.C. 1985, c. F-11 (“FAA”), and are therefore subject to the Crown’s discretion

to allow interest under s. 21(2) of that statute. The respondents rely upon the common law rule that the Crown cannot expropriate private property without compensation unless there is a clear statutory intention to do so. The respondents also raise the issues of unjust enrichment, fiduciary duty, and breach of trust. They argue that their aboriginal status is relevant as it relates to the alleged fiduciary duty owed to them by the Crown.

A. *Statutory Framework*

9 I conclude that, for the purposes of this appeal, the *Fisheries Act* constitutes a complete code dealing with the return of seized property. See *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56, at para. 36, *per* Iacobucci J., where he stated that the object of the Act is the "proper management and control of the commercial fishing industry". He observed at para. 37 that the statutory scheme deals "exhaustively" with property seized under the *Fisheries Act*, a highly regulated field.

10 It is apparent that the *Fisheries Act* creates a comprehensive framework for dealing with issues arising from seizure. For example, it provides for the detention of things seized (s. 71(1)). It also provides for the return of things seized if security is given (s. 71(2)) or if proceedings are not instituted (s. 71(3)). Other provisions deal specifically with fish. Section 73.2 provides that, at the time of seizure, a fishery officer may return to the water any fish that the officer believes to be alive. Section 70(3) provides that if a fishery officer has seized fish, he or she may dispose of it in any manner considered appropriate.

11 At issue in this appeal is the interpretation of s. 73.1. It provides that any fish, thing, or proceeds realized that are not forfeited to Her Majesty are to be delivered to the person from whom the fish or thing was seized. This is clear. Section 71.1(2) contemplates the payment of interest when an amount is due to Her Majesty. (See also ss. 79.4(1) and 79.4(3).) However, there

is no provision for interest if the payment is going the other way.

12 As stated, I agree with the trial judge's conclusion that the *Fisheries Act* creates a complete code dealing with the disposition and return of seized property. This code imposes no obligation on the Crown to pay interest or any other amount in addition to what is set out in s. 73.1. The plain meaning of this statutory provision is clear. This may seem unfair given that the proceeds in the case at bar were held for a number of years. If so, it is for Parliament to correct it. The circumstances outlined above occurred simply through the operation of the Act. The comprehensive nature of this statutory regime is not diminished by the fact that the proceeds are to be paid to the Receiver General. This simply directs where the funds are to be paid. It does not add to nor detract from s. 73.1 which governs what is to be returned if not properly forfeited.

13 The above conclusion disposes of the appeal. The respondents' additional arguments can be dealt with briefly.

B. *Other Arguments*

(1) The *Financial Administration Act*

14 The respondents submitted that the *Fisheries Act* is not a complete code, but is supplemented by the FAA. They argued that the proceeds of sale are "special purpose" funds as defined in s. 2 "public money" (*d*) and are therefore within the Crown's discretion to pay interest under s. 21(2) of that Act.

15 Apart from those submissions' failing because the *Fisheries Act* is a complete code,

the respondents' argument meets an additional hurdle. Even if the proceeds were special purpose funds under s. 2 "public money" (*d*) of the FAA, the appellant still had a discretion to allow interest, which was not done.

(2) Unjust Enrichment

16 An additional submission by the respondents was that the Crown was unjustly enriched by its retention of the proceeds during the time of seizure. This argument also fails. The test for unjust enrichment has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and, (3) an absence of juristic reason for the enrichment. See *Pettkus v. Becker*, [1980] 2 S.C.R. 834, at p. 848; *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, at p. 784; *Garland v. Consumers' Gas Co.*, [2004] 1 S.C.R. 629, 2004 SCC 25, at para. 30.

17 Assuming it can be established that there has been an enrichment of the Crown and a corresponding deprivation of the respondents, the element of "juristic reason" poses an unsurmountable hurdle in this appeal. The seizure, sale, and payment of the proceeds were lawfully carried out pursuant to the Act. The respondents rely upon *Manitoba v. Air Canada* (1978), 86 D.L.R. (3d) 631 (Man. C.A.), aff'd [1980] 2 S.C.R. 303, to support their claim that the Crown is not immune from the obligation to pay interest, even if the relevant legislation is silent on the matter. However, in my opinion, *Air Canada* is of no assistance because the issue in that case turned upon whether there was a lack of constitutional authority. There, the Crown collected taxes pursuant to an act that was *ultra vires* the province. This lack of legislative competence was central to that decision. This is not the case here. The constitutional authority of Parliament to enact the provisions of the *Fisheries Act* in question was not challenged.

18 The operation of the statutory provisions provides a "juristic reason" barring recovery. See *Garland* where this Court reformulated the test for "juristic reason" *per* Iacobucci J. at paras. 44-46:

> . . . in my view, the proper approach to the juristic reason analysis is in two parts. First, the plaintiff must show that no juristic reason from an established category exists to deny recovery. By closing the list of categories that the plaintiff must canvass in order to show an absence of juristic reason, Smith's objection to the Canadian formulation of the test that it required proof of a negative is answered. The established categories that can constitute juristic reasons include a contract (*Pettkus*, *supra*), a disposition of law (*Pettkus*, *supra*), a donative intent (*Peter*, *supra*), and other valid common law, equitable or statutory obligations (*Peter*, *supra*). If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case under the juristic reason component of the analysis.
>
> The *prima facie* case is rebuttable, however, where the defendant can show that there is another reason to deny recovery. As a result, there is a *de facto* burden of proof placed on the defendant to show the reason why the enrichment should be retained. This stage of the analysis thus provides for a category of residual defence in which courts can look to all of the circumstances of the transaction in order to determine whether there is another reason to deny recovery.
>
> As part of the defendant's attempt to rebut, courts should have regard to two factors: the reasonable expectations of the parties, and public policy considerations.
>
> . . .

The first question is whether there is a juristic reason from an established category to deny recovery. If so, recovery is denied. If not, recovery is *prima facie* allowed unless the defendant can show that there is another reason to deny recovery. This can rebut the plaintiff's *prima facie* case.

19 In the case at bar, the seizure, sale, and return of the proceeds were all done pursuant to the *Fisheries Act*. The statute provides for the return of any fish, thing, or proceeds realized from its disposition. This is what happened. Any residual gain or loss is ancillary. Relying upon such a statutory basis falls within the "disposition of law" category of juristic reason. See *Garland*, at para. 49; *Reference re Goods and Services Tax*, [1992] 2 S.C.R. 445; *Mack v. Canada (Attorney General)* (2002), 60 O.R. (3d) 737 (C.A.).

20 The effect of this complete code is similar to what occurred in *Zaidan Group Ltd. v. London (City)*, [1991] 3 S.C.R. 593, aff'g (1990), 64 D.L.R. (4th) 514 (Ont. C.A.). In *Zaidan*, a taxpayer successfully appealed a municipal tax assessment. The city refunded the overpayment of taxes but refused to pay interest on the overpayment. The taxpayer unsuccessfully challenged this decision. Carthy J.A., for the Ontario Court of Appeal, recognized at pp. 518-19 that a claim in unjust enrichment is ousted by a lawful and complete statute:

> The common thread of unfairness recognized by the common law breaks when a legislative body acts within its jurisdiction and stipulates, as here, that the municipality shall levy assessed amounts, the taxpayers shall pay those amounts, the municipality may use the money it has collected, and must refund it if adjusted downward on appeal, with interest if it has passed a by-law. The statute could equally have said that a taxpayer must pay the assessed amounts without any recourse by way of complaint. The unfairness of such a statute would be universally denounced but, if it were constitutionally competent to the legislature, the common law would have nothing to say on the subject. There is no question of a gap being left in the legislation for the common law to fill. The taxes are a statutory creation and the conditions surrounding their payment and repayment must be in the statutes associated with their creation. The common law cannot characterize competent legislation as unjust, and it would be doing so if it imposed an additional duty to pay interest on a statutory duty to levy and to refund a specific amount of money.

21 This is distinguishable from cases such as *Air Canada* where the enrichment in question is without constitutional or statutory authority. This Court unanimously dismissed the taxpayer's appeal in *Zaidan*, explaining at p. 594:

We are all of the view that this appeal must be dismissed. The appellant's claim to interest on an overpayment of tax based on the doctrine of unjust enrichment is not available in this case in the light of s. 6(1) of the *Municipal Interest and Discount Rates Act, 1982*, S.O. 1982, c. 44. This section authorizes a municipality to pass a by-law for the payment of interest and also gives a municipality a discretion to do so. In this case, the City of London did not pass such a by-law. Accordingly, the claim for unjust enrichment fails and the appeal is dismissed with costs.

22 Here, Parliament has enacted a statutory regime to regulate the commercial fishery. It has provided an extensive framework dealing with the seizure and return of things seized. This regime specifically provides for the return of any fish, thing, or proceeds realized. This was followed. Interest or some other additional amount might have been gratuitously included, but it was not. The validity of the *Fisheries Act* was not, nor could have been, successfully challenged. Therefore, the Act provides a juristic reason for any incidental enrichment which may have occurred in its operation. As a result, the unjust enrichment claim fails.

(3) Fiduciary Duty

23 A further submission was that the Crown owed the respondents a fiduciary duty. This argument cannot succeed. First, it should be noted that in the issue as framed by the parties, the aboriginal status of the respondents was not raised. Second, even if it were raised, it would not affect the outcome of this appeal. Although the Crown in many instances does owe a fiduciary duty to aboriginal people, it is the nature of the relationship, not the specific category of actor involved, that gives rise to a fiduciary duty. Not every situation involving aboriginal people and the Crown gives rise to a fiduciary relationship. See *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73, at para. 18, *per* McLachlin C.J. The provisions of the *Fisheries*

Act dealing with the return of things seized are of general application. I agree with the trial judge and the Court of Appeal that the respondents' aboriginal ancestry alone is insufficient to create the duty in these circumstances.

24 The concept of fiduciary duty is not an invitation to engage in "results oriented" reasoning. It is a principled analysis. At its core is the obligation of one party to act for the benefit of another. This obligation may derive from various sources such as statute, agreement, or unilateral undertaking. In *Guerin v. The Queen*, [1984] 2 S.C.R. 335, Dickson J. (as he then was) stated at p. 384:

> I do agree, however, that where by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power, the party thus empowered becomes a fiduciary. Equity will then supervise the relationship by holding him to the fiduciary's strict standard of conduct.

25 Also, in *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, at p. 409, La Forest J. stated:

> In these cases, the question to ask is whether, given all the surrounding circumstances, one party could reasonably have expected that the other party would act in the former's best interests with respect to the subject matter at issue.

26 Other characteristics of a fiduciary relationship were described by Sopinka J. in *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, at p. 599. These are: (1) the fiduciary has scope for the exercise of some discretion or power; (2) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's interests; and, (3) the beneficiary is

peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power. However, these are simply characteristics and not necessarily determinative of a fiduciary relationship.

27 At the appeal here, the respondents could not point to any source imposing an obligation upon the Crown to act for their benefit. There was no agreement, undertaking, or statute which would impose this duty. Instead, the spawn was seized during the enforcement of the *Fisheries Act*. This was a quasi-adversarial context. The Crown was not undertaking to act for the respondents' benefit but was acting for the benefit of the commercial fishery, a public benefit. This case is distinguishable from *Authorson v. Canada (Attorney General)* (2002), 58 O.R. (3d) 417 (C.A.), rev'd on other grounds, [2003] 2 S.C.R. 40, 2003 SCC 39. In *Authorson*, the government stepped in to act as administrator of disabled veterans' pension funds when those veterans were incapable of managing the funds themselves. While the facts of *Authorson* may support a finding of fiduciary relationship, the case at bar does not. The fiduciary duty argument fails.

(4) Trust

28 Finally, the respondents claimed that the Crown held the proceeds as a trustee. This argument is also flawed. The statutory scheme created by the *Fisheries Act* dispels any suggestion that the Act intended to create a trust relationship through its operation. Any presumption which may have existed is rebutted by this statutory regime. At most, the respondents had a debt claim against the Crown for the amount of proceeds realized from the sale of seized spawn once the stay of proceedings occurred. It is this chose in action which served as a substitute for the thing seized.

V. Conclusion

29 I would answer the question posed by the parties as follows:

When “fish” has been lawfully seized and disposed of under the provisions of the Act and the proceeds of disposition are later returned pursuant to s. 73.1 of the Act, is the Crown obligated to pay to the person(s) from whom the “fish” was seized any monies in addition to the net proceeds realized from the said disposition?

The answer is “no”.

30 I would allow the appeal without costs.

Appeal allowed.

Solicitor for the appellant: Department of Justice, Vancouver.

Solicitors for the respondents: Blake, Cassels & Graydon, Vancouver.