

1948
Apr. 5, 6, 7,
15, 16, 23, 24
Nov. 26

BETWEEN:

JOY OIL COMPANY LIMITED and }
JOY OIL LIMITED..... } SUPPLIANTS;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Crown—Petition of Right—Claim for subsidies on sale of gasoline—“Place” —P.C. 1195, February 19, 1941—Order 010A of the Oil Controller— “Place” means geographical locality and not place of business—Suppliants not entitled to subsidy.

Suppliants seek to recover from respondent certain subsidies on gasoline imported into Canada by suppliants, one of which carried on business as a retailer of gasoline and lubricating oils through the operation of a main terminal in Toronto, Ontario, and sixteen service stations in the Toronto area; the other suppliant operates a main terminal and twelve stations in Montreal, Quebec.

P.C. 1195, February 19, 1941, empowered the Oil Controller “subject to the approval of the Minister to fix or regulate the price or fix the maximum price or the minimum price at which oil may be sold in any place, area or zone by or to any person . . .” and pursuant to such power the Order of the Oil Controller 010A provided that “the price to be paid in any place shall not exceed the maximum price at which any such petroleum product was sold or offered for sale in such place or for delivery to such place on the 30th day of September, 1941 . . .”

Held: That the word “place” as used in P.C. 1195 and Order 010A means a geographical locality and not a “place of business”, and establishes a ceiling price in each geographical locality and not on an outlet basis.

2. That the price at which suppliants could sell gasoline was not the price at which they had been selling at each of their stations, but the maximum price at which it had been sold during the basic period in Toronto and Montreal.

PETITION OF RIGHT to recover from the Crown money claimed by suppliants as subsidies on the sale of gasoline and lubricating oils by suppliants.

The action was tried before the Honourable Mr. Justice O’Connor at Ottawa.

R. M. Willes Chitty, K.C. for suppliants.

Hugh E. O’Donnell, K.C. for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

O'CONNOR J. now (November 26, 1948) delivered the following judgment:

1948
 JOY OIL Co.
 LTD.
 v
 THE KING
 O'CONNOR J.

The suppliants claim by Petition of Right to be entitled to recover from the Crown subsidies on gasoline imported by the suppliants. The suppliants were incorporated in the year 1934, and carried on business as retailers in gasoline and lubricating oils. The Joy Oil Company Limited operates a marine terminal in Toronto, and sixteen service stations in the Toronto district. The Joy Oil Limited operates a marine terminal and twelve gasoline stations in Montreal. The suppliants had always imported gasoline from Trinidad into Canada, and had sold their gasoline to consumers at prices lower than the prices of their competitors in Toronto and Montreal.

Pursuant to the powers conferred by Section 6 of the War Measures Act, 1914, by an Order in Council P.C. 2516, dated September 3, 1939 (Exhibit 5) the Wartime Prices and Trade Board, hereinafter called the Board, was created with the powers necessary to provide safeguards under war conditions against undue enhancement in the prices of food, fuel and other necessaries of life, and to ensure an adequate supply and equitable distribution thereof.

P.C. 6834, dated August 28, 1941 (Exhibit 9) reorganized the Board, and gave the Board power to fix maximum or minimum prices or markups at which any goods or services may be sold. And under Section 7(d) to recommend any additional measures it may deem necessary for the protection of the public with respect to goods or services.

By P.C. 2715, dated June 24, 1940 (Exhibit 6) Wartime Industries Control Board was created, consisting of the controllers from time to time appointed by the Governor-General in Council. This was amended by P.C. 6835, dated August 29, 1941 (Exhibit 10) Section 8(1) (d) of which provided:—

8(1) Notwithstanding the provisions of any other Order in Council, every Controller shall have power, exercisable from time to time subject to the approval of the Chairman, to fix specific or maximum or minimum prices and/or markups at or for which any articles, commodities, substances, goods, services or things over, or in respect to, which such Controller is given authority, jurisdiction or power, may be sold or offered for sale or supplied generally or in any place, area or zone . . .

P.C. 2818, dated June 28, 1940 (Exhibit 7) appointed an Oil Controller and made Regulations respecting oil, includ-

1948
JOY OIL Co.
LTD.
v.
THE KING
O'CONNOR J.

ing, *inter alia*, the power, subject to the approval of the Minister, to fix maximum prices or maximum markups at which oil may be sold or offered for sale. The Regulations were amended by P.C. 1195, dated February 19, 1941 (Exhibit 15), and provided *inter alia*:—

(d) Subject to the approval of the Minister, to fix or regulate the price or fix the maximum price or the minimum price at which oil may be sold or offered for sale in any place, area or zone by or to any person or class of persons and for such purpose to designate any such person or class of persons or any such place, area or zone.

The Oil Controller issued Order 010, dated October 21, 1941 (Exhibit 8), which confirmed a price increase and provided for regulations governing prices for petroleum products, including

(a) The price to be paid in any place shall not exceed the maximum price at which any such petroleum product was sold or offered for sale in such place or for delivery to such place on the 30th day of September, 1941, plus any applicable price increase confirmed, authorized or required by this Order and having regard to the quantity purchased.

Order 010 was amended by Order of the Oil Controller, numbered 010A, dated January 28, 1942 (Exhibit 13A), to provide:—

8. From and after the date of this Order, the price to be paid for petroleum products, or any of them, by any purchaser thereof in any Province of Canada shall be regulated as follows:—

(1) The price to be paid in any place shall not exceed the maximum price at which any such petroleum product was sold or offered for sale in such place or for delivery to such place on the 30th day of September, 1941, having regard to the quantity purchased, plus

(a) any applicable price increase confirmed and/or authorized by this Order, and

(b) any price increase actually imposed in any place as authorized by paragraph 7 of Order numbered 010 and dated the 21st day of October, 1941; provided that such price increase was imposed on or after the date of the said Order and on or before the 13th day of December, 1941, when the said paragraph of the said Order was suspended by the Oil Controller.

Orders 010 and 010A were concurred in by the Board and approved by the Wartime Industries Control Board.

P.C. 8527, dated November 1, 1941 (Exhibit 12), fixed the "Maximum Prices for Goods":—

3. (1) No person shall, on or after November 17, 1941, (amended by P.C. 8818 dated December 1, 1941) sell or supply or offer to sell or supply any goods or services at a price that is higher than the maximum price for such goods or services as provided in these regulations, unless otherwise permitted under the provisions of these regulations.

Section 4 provided that:—

4. The provisions of Section 3 of these regulations shall not apply with respect to:—

- (g) any price fixed by the Board, or fixed or approved by any other federal, provincial, or other authority with the written concurrence of the Board.

1948
 JOY OIL Co.
 LTD.
 v.
 THE KING
 O'Connor J.

The Board issued a pamphlet dated November 21, 1941, entitled "Preliminary Statement of Policy" (Exhibit 1). They announced that on December 1, 1941, there would come into force in Canada a complete control of all prices and that higher prices would not be permitted than those at which goods were actually sold during the four weeks, September 15th to October 11th. Section X stated that the whole question of imports in relation to price ceiling was being studied by the Board and a statement of policy might be expected in the near future.

By a second pamphlet dated December 2, 1941, the Board announced the "Import Policy" (Exhibit 2).

On January 1, 1942, a "Statement of Import Policy" (Exhibit 3) was published by the Board in *The Canada Gazette*, No. 124, Vol. LXXV.

P.C. 9870, dated December 17, 1941 (Exhibit 13), authorized the Minister of Finance to cause the incorporation of a private company wholly owned by the Crown, and to be known as Commodity Prices Stabilization Corporation Limited, hereinafter called the Corporation, with the intent and purpose of facilitating, under the Board, the control of prices of goods in Canada, with such powers, in addition to those conferred by the Companies Act, as may be set forth in the Letters Patent, and further authorized the Minister to execute an agreement with the Corporation in terms of the draft attached thereto. And to advance \$10,000,000 to the Corporation for the purpose, *inter alia*, of paying subsidies. And under Section 2 the Board was authorized from time to time to delegate to the said Company such of the powers of the Board as the Board may deem advisable. Under the Agreement the Corporation was authorized in discharge of such duties as may be delegated to it, to pay subventions, subsidies, as may be deemed advisable, in accordance with the principles formulated from time to time by the Board and approved by the Minister.

1948
 JOY OIL Co. LTD.
 v.
 THE KING
 O'CONNOR J.

P.C. 9870 (Exhibit 13) and the draft Agreement were amended by P.C. 5863, dated July 7, 1942 (Exhibit 14). Section A(1) gave the Company the powers, in addition to those contained in the Letters Patent, the Companies Act, and the Order in Council, to do all things as may be deemed necessary for the purpose of carrying out the object of the Company and of the agreement referred to in Section 3.

P.C. 5863 authorized the Company (*inter alia*) to:—

A—(2) (a) Subject to the terms of the Agreement between His Majesty and the said Company referred to in Section 3 hereof, to pay such sum or sums by way of subvention, subsidy, bonus or otherwise to any person, firm or corporation as may be deemed advisable; provided, however, that the said Company shall not enter into any agreement binding itself to pay any such sum or sums to any person, firm or corporation except with the approval of the Minister of Finance.

Section A(5) provided for additional funds for the Company as an accountable advance or advances, and under Section B the Agreement under P.C. 9870 was rescinded and a new draft Agreement approved which provided *inter alia*:—

1. The payment by the Company of any financial assistance to or for the benefit of any person, firm or corporation by way of subvention, subsidy, bonus or otherwise shall be in accordance with Principles formulated from time to time by the Wartime Prices and Trade Board and approved by the Minister.

Section C provided that P.C. 9870 shall be read and construed as if it included all the provisions of the substituted agreement and all amendments thereto.

Under Letters Patent of the Corporation (Exhibit C), the Corporation was given the power:—

(a) 2. To pay such sum or sums, by way of subvention, subsidy, bonus or otherwise to any person, firm or corporation as the company may deem fit and proper.

Owing to the shortage in shipping space the suppliants were unable to bring gasoline in from Trinidad so they purchased it in the United States at a cost that was higher than that which they had paid for the gasoline from Trinidad. They then made applications for payment of the subsidies (Exhibits 16 and 17) in respect to importations during the period December 1, 1941 and July 1, 1942.

The suppliants contended that "place" in Oil Orders 010 and 010A (Exhibits 8 and 13A) meant "place of business" and that their retail price ceiling was the price at which gasoline had been sold on September 30, 1941, at each of their service stations.

1948
 JOY OIL Co.
 LTD.
 v
 THE KING
 O'Connor J.

The applications for subsidy were refused by the Corporation on the ground that there were similar goods available in Canada at reasonable prices. The suppliants denied that there were similar goods available in Canada and that if there were they were not at reasonable prices having regard to their contention that the price ceiling was on an individual outlet basis. The Corporation contended that the price ceiling was not on an individual basis but on a geographical basis, i.e., Montreal and Toronto in this case, and that the suppliants could have increased their price to that of their competitors. A lengthy correspondence ensued. The contention of the suppliants and the reply of the Corporation are well set out in the letter from the President of the Corporation to the suppliants, dated October 16, 1942 (Exhibit 27):—

The brief contains several submissions upon which we deem it proper to comment:

The statement in the Import Policy that "No subsidies will be paid if similar goods are available in Canada at reasonable prices" applies to this case, the Oil Controller having advised us that your clients could have obtained and can obtain similar goods in Canada at reasonable prices. The further statement quoted by you, "Diversion of purchases from domestic to foreign sources of supply if not justified by a shortage of supply in Canada . . ." was included in the Policy announcement by way of special warning and does not detract from the generality of the statement first quoted.

The statement quoted on p. 3 of your submission from Item 3 of the Statement of Import Policy of December 2, 1941, depends entirely upon the meaning of "retail ceiling prices." As indicated below, ceiling prices in this case were such that your clients could have continued importing in the normal manner, so far as the relationship between their import costs and their selling prices was concerned, without requiring any subsidy payment.

Your submission stresses the point that the Wartime Prices and Trade Board's Preliminary Statement of Policy stated that each seller was bound by his own individual selling prices as established during the basic period. This referred, of course, only to goods which were governed by an individual ceiling. It did not refer to goods which were subject to a uniform ceiling under a pre-existing law or under a subsequent order of the Board. The provisions of the Maximum Prices Regulations as originally enacted expressly preserved existing maximum price orders of the Board and other authorities, including the Oil Controller's Order 010. The Oil Controller's Order 010A, amending Order 010 in some particulars, received the concurrence of the Board. In both these orders maximum prices were set for gasoline on a geographical basis and not on an individual basis. The Wartime Prices and Trade Board did not and does not require your clients to sell at these maximum prices but the fact remains that it was open to your clients to adjust their retail selling prices by an amount sufficient to cover the increased costs of their imports.

1948
 Joy Oil Co.
 LTD.
 v.
 THE KING

The Oil Controller declares to us that your clients did not approach him in connection with this matter; further, the major Canadian gasoline refining companies have declared to the Oil Controller that they were not approached by your clients.

O'Connor J.

Having considered fully the submissions contained in your brief, we find no reason to change our position, and I must therefore confirm that no subsidies are payable in respect of the applications submitted.

On November 9, 1942, the Corporation by letters (Exhibits 29 and 30) advised the suppliants that the applications had been refused:—

With reference to your applications for Subsidy No. 1, 2, 3, 4, amended, 5, 6, 7, amended, 8, amended, and 9, the Oil Controller has advised us that similar products of Canadian production are available in Canada at reasonable prices in relation to the official Retail Ceiling for Gasoline.

In accordance with Sections 9, 4(c), and 9, of the Import Policies of the Wartime Prices and Trade Board of December 2, 1941, January 1, 1942, and August 1, 1942, respectively, we have no alternative, but to refuse payment on these applications.

The Minutes of the Meeting of the Corporation (Exhibit F) show that the applications were considered and refused at a number of meetings and the final resolution, dated October 21, 1942, is as follows:—

With further reference to the request from the solicitors for Joy Oil Company Limited and Joy Oil Ltd., that their applications for import subsidy on gasoline be reconsidered (page 1037), the Chairman reported that we had now replied pointing out, *inter alia*, that similar goods were and are available in Canada at reasonable prices; that the Maximum Prices Regulations had maintained pre-existing law such as the Oil Controller's Orders 010 and 010A so that these companies could have adjusted their retail selling prices by an amount sufficient to cover the increased costs of their imports; and concluding by confirming that no subsidies are payable in respect of the applications submitted.

A further submission was then made by the solicitors to the Minister of Finance reiterating the contentions of the suppliants and renewing the applications (Exhibit 31). In reply, dated March 11, 1943, (Exhibit 32), the Minister of Finance quoted from the Oil Controller's Order 010 (Exhibit 8), Section 9(a), (b) and (c), and stated that the maximum price of petroleum products having been fixed by the Oil Controller's Order 010, it followed that such products were not subject to the provisions of the General Order Maximum Prices Regulations (Exhibit 12), but were governed by the Special Order 010 (Exhibit 8) and that:—

The question as to whether the Joy Companies are entitled to receive payment of a subsidy would appear to depend upon the interpretation of the word "place" as contained in the Orders above referred to. If, as you contend, this word means "place of business," your clients are entitled

to payment of a subsidy. If, on the other hand, it means a geographical area, i.e., a municipality or adjacent district, they are not, since my advice is that no subsidy would have been required to enable your clients to sell gasoline at the maximum price permitted in the Montreal and Toronto areas.

The word "place" taken by itself is a word of rather wide meaning and is, of course, capable of either interpretation. In this connection I quote two definitions of the word taken from the Oxford Dictionary.

- (1) "A portion of space in which people dwell together; a general designation for a city, town, village, hamlet, etc."
- (2) "A building, apartment, or spot devoted to a specified purpose, (Usually with specification as *place of amusement, of resort, bathing place, etc.*)"

The question as to the interpretation to be placed on this word as used in the Orders above referred to, was submitted to the Solicitor of the Wartime Prices and Trade Board for his opinion. He has advised that in his opinion the word "place" as used in the Oil Controller's Orders does not mean "place of business" but means a geographical locality as indicated in the first of the two definitions which I have quoted above.

I suggest that the interpretation to be placed on the word as contained in the Order is affected by the use of the preceding word "in." Had the Order read "at a place," it could be more strongly urged that the phrase referred to a specific establishment and not to a geographical area.

In view of the opinion which has been given by the Solicitor of the Wartime Prices and Trade Board, I regret to have to advise you that I do not feel that I can interfere with the decision of the Commodity Prices Stabilization Corporation that your clients are not entitled to payment of the subsidy claimed.

The claim is not put on the basis of a contract arrived at by mutual agreement. There were no negotiations between the parties prior to the applications for subsidy.

Nor is the claim put on the basis of compliance with conditions of regulations having the force of law. P.C. 5863, which authorized the Corporation to pay subsidies, does not set out conditions and its language is permissive and not imperative. In addition, payment of subsidies was to be made as "may be deemed advisable." The claim is put first, on the basis that the statements of policy issued by the Board (Exhibits 1, 2 and 3) constituted an offer to pay subsidies, which was accepted by the suppliants by performance of the conditions of the offer. That is, that the Board, as an agent or servant of the Crown, in these statements made an offer that if the suppliants and other Canadian importers would continue to import and sell at the retail ceiling price that appropriate subsidies would be paid to them by the Corporation so that imported goods would cost the importer no more than was appropriate in

1948
 Joy Oil Co.
 LTD.
 v.
 THE KING
 O'Connor J.

1948
 JOY OIL Co. LTD.
 v.
 THE KING
 O'Connor J.

relation to the retail ceiling price. And that the suppliants accepted this offer by continuing to import and sell at the retail selling price and that the imported goods cost them more than was appropriate in relation to the retail ceiling price. And that this offer and its acceptance created a contract under which there is a contractual liability on the respondent to pay them subsidies and a right in the suppliants to recover the subsidy enforceable by petition of right.

And the claim is put next on the basis of the letter to the suppliants from the Minister of Finance (Exhibit 32).

Counsel agreed that the Court should first determine whether there was a right to the subsidy, and then, if so, a reference would be made to ascertain the amount. P.C. 6834, August 28, 1941, (Exhibit 9) rescinded the prior War-time Prices and Trade Board regulations. The Board was not empowered by P.C. 6834 to agree on behalf of the Crown to pay subsidies. The only provision in respect of it was (Section 7) that "It shall be the duty of the Board (*d*) to recommend any additional measures it may deem necessary for the protection of the public with respect to goods and services . . ." And it will be noted that in the Preliminary Statement of Policy, dated November 21, 1941 (Exhibit 1), it was stated that if the total burden was too great the Board . . . will recommend that the Government . . . should share the burden by way of subsidy . . .

But the Board in "Import Policy", December 2, 1941 (Exhibit 2), stated that "importers may therefore continue importing in the normal manner, with the assurance that appropriate subsidies will be provided with respect to goods imported on or after December 1, 1941, on the basis outlined below." And that the Commodity Prices Stabilization Corporation may act by paying subsidies or by buying and selling goods.

The respondent then (December 17, 1941) authorized the incorporation of the Commodity Prices Stabilization Corporation with power to pay subsidies in accordance with the principles formulated from time to time by the Wartime Prices and Trade Board and approved by the Minister. And subsidies were paid on goods other than motor gasoline.

It is clear from this that the respondent subsequently ratified and confirmed the action of the Board.

It is quite clear from P.C. 6834 that the Board was not an independent body but a servant or agent of the respondent.

It is equally clear from P.C. 9870 (Exhibit 13) and P.C. 5863 (Exhibit 14) that the Corporation was not an independent body, but the servant or agent of the respondent. It was incorporated to provide the machinery to pass on and pay the subsidies.

If the statements in Exhibit 1, 2 and 3 contain an offer capable of acceptance by performance, as the suppliants contend, then in the circumstances, on acceptance, a liability would be created on the respondent.

What remains to be considered here, then, is first whether the statements of policy (Exhibits 1, 2 and 3) constitute an offer capable of acceptance by performance.

The Preliminary Statement (Exhibit 1) was superseded by the "Import Policy" (Exhibit 2) dated December 2, 1941. The suppliants rely on the following paragraphs of Exhibit 2:—

3. The general principle is that imported goods will, in general, cost the importer no more than is appropriate in relation to retail ceiling prices. Importers may, therefore, continue importing in the normal manner, with the assurance that appropriate subsidies will be provided, with respect to goods imported on and after December 1st, 1941, on the basis outlined below. The methods will in the first instance consist of direct subsidies to importers, with the possibility that from time to time duties and taxes on imported goods may be reduced in such a way as to make subsidies unnecessary.

Part of 5. Subject to the variations mentioned, the subsidies will be paid on all eligible goods imported through normal trade channels for eventual sale to domestic consumers. This will apply to goods for which import entry is passed on and after December 1st, 1941.

Part of 6(a) The Board will endeavour to measure the amount of the subsidy in such a way that the retailer will receive his goods at a cost which is reasonable in relation to his retail ceiling price. It follows that those who maintained low retail prices during the basic period will be able to continue to sell at those prices without undue hardship. Each retailer who imports direct should prepare a list of his ceiling prices for imported goods.

9. At the present time, however, the important thing is for import trade to be continued in accordance with past practice, even if present import prices involve an actual loss to the importers concerned, for subsidy adjustments will be made retroactive to December 1st. Importers should, therefore, adjust their own selling prices so as to enable retailers to carry on under the retail ceiling.

1948
 JOY OIL Co. January 1, 1942:—
 LTD.

v.
 THE KING
 O'Connor J.

2(1) The Board's objective is to ensure a continued flow of necessary imported goods for sale in Canada under the retail price ceiling. If import prices of such goods rise to a degree which cannot be absorbed by trade and industry, subsidies will be paid through the Commodity Prices Stabilization Corporation. Duties and taxes on imported goods may, however, be reduced from time to time in such a way as to reduce the need for subsidies.

The suppliants contend that these are not general exhortations but specific statements—"Keep on importing on the assurance that you will be paid a subsidy"; "Subsidy will be paid on all eligible goods imported"; "The Board will endeavour to measure the amount of the subsidy in such a way that the retailer will receive his goods at a cost which is reasonable in relation to his retail ceiling price. It follows that those who maintain low retail prices during the basic period will be able to continue to sell at those prices without undue hardship."

And that having kept on importing in accordance with these specific statements and having maintained low prices, and the cost of imported goods having been more than was appropriate to their low retail ceiling price that they are entitled to subsidy "measured in such a way that they would receive their goods at a cost which is reasonable in relation to their retail ceiling price."

If the sections quoted above stood alone, the contention of the suppliants might well prevail. But they were not alone, and in my view when read with the remainder of the statements do not constitute an offer capable of acceptance by performance so as to create a liability on the respondent.

The Board set out quite clearly that they were enunciating "general principles," "general statements" and "general import policy," as will be seen from the following excerpts:

Ex. 2 (9) The above represents the most comprehensive general statement that can be made.

Ex. 2 (3) The general principle is that imported goods will, in general, cost the importer no more than is appropriate in relation to retail ceiling.

Ex. 3 (2(1)) The general import policy provides for the payment of subsidies . . .

Ex. 3 (1) If import prices of such goods rise to a degree which cannot be absorbed by trade and industry, subsidies will be paid through the Commodity Prices Stabilization Corporation.

The Board was urging importers to continue to import, but that was a general exhortation. The statement, Exhibit 2(9):—

1948
 JOY OIL CO.
 LTD.
 v.
 THE KING
 O'CONNOR J.

Importers are urged to have confidence that the Board and the Commodity Prices Stabilization Corporation will deal with individual problems fairly and reasonably.

clearly indicated that each application would be passed on by the Board and that in turn obviously involved refusal or acceptance.

Then the Board in both Exhibit 2(3) and Exhibit 3(1) expressly reserved the right to exclude any goods from import duty.

And the Board would determine whether the increased cost could be absorbed by the importer without undue hardship, or whether it was "greater than the amount which can reasonably be expected to be absorbed."

Exhibit 2(3):—

It must also be emphasized that the Board cannot be expected to approve subsidies where the increase in import prices is not of significant proportions for those concerned. Any increase which the importer or his trade customers can absorb without undue hardship should not even be made the subject of an application to the Board. If the increased cost is greater than the amount which can reasonably be expected to be absorbed, the Board, acting wherever possible on the advice of its Administrators, will set the subsidy at a reasonable level.

In order to determine the increase in cost the Board, with the assistance of its Administrators, would determine the appropriate basic costs. Exhibit 2(7):—

Each industry should consult with its Administrator with a view to establishing the appropriate basic cost of materials. The time at which materials were bought for making goods sold by retailers in September and October will, of course, vary as between industries, and as between different kinds of goods produced by each industry. The Board, with the assistance of its Administrators, will determine the appropriate basic costs, so that higher import prices, if not reasonably capable of being absorbed by the industry, may be offset by appropriate subsidies.

The import cost would be ascertained by the Board *after examination* on:—

- (a) The cost to the applicant, or
- (b) By special procedure, or
- (c) By the average or standard cost.

Exhibit 3(5):—

Where an individual firm has a large volume of imports, (whether finished goods or otherwise), the Board *after examination* may find it more practicable to adopt special procedures for the purpose of establishing import costs, *the extent to which rises in such costs may be absorbed,*

1948
 JOY OIL CO.
 LTD.
 v.
 THE KING
 O'Connor J.

and the extent to which subsidies may properly be provided. On the other hand, there will be many cases where average or standard cost and selling prices will be used as the basis of calculating the appropriate amount of subsidy, particularly with reference to imports of semi-finished goods.

While the statements do lay down some general rules and some specific rules, it was clearly stated in Exhibit 3(5) that:—

No definite rules can be laid down for raw materials including fuel.

And in Exhibit 2(8) Petroleum and its Products listed under the heading of "Imported Fuel":—

Imported Fuel—Coal, coke, petroleum and its products, will be dealt with on much the same basis as raw materials if circumstances so require.

An importer could not tell whether or not his goods would or would not be excluded. Nor the method that the board would use in determining the increased cost. Nor whether the increased cost would be absorbed by him or not. And importers were clearly advised that no definite "rules" could be laid down for imported fuel which included "petroleum and its products."

While the Board laid down as a general principle that subsidies would be paid to importers, they made no specific statement that could be construed as an offer by every importer. The whole of the statements clearly indicate that the Board would decide after examination of all the facts, whether or not a subsidy would be paid, and if so, in what amount.

It was contended in the *Western Dominion Coal Mines Ltd. v. The King* (1) (excluding contract and estoppel) that there had been an acceptance of an offer by compliance with the terms of regulations having the force of law. Here, of course, it is contended that the offer was contained in the Statements of Policy of the Board. Except for that difference, what was said in the *Western Dominion* case (*supra*) by Rand, J., page 335, can be applied here. That the conditions in the statement of policy clearly involved the discretion of the Board which could only be exercised after the increase in cost became known and on an appreciation of all circumstances; a discretion which became exercised only when the subsidy was in fact paid. What the suppliants contend is that by importing gasoline and selling at the retail price ceiling, that would *ipso facto*

guarantee any company importing at an increase in cost over past costs, a subsidy. But that is wholly inconsistent with what the Board laid down. These applications were refused and the discretionary nature of the reserved powers permitted that to be done.

1948
 JOY OIL Co.
 LTD.
 v.
 THE KING
 O'Connor J.

If I am not correct in that conclusion, and if the statements of the Board do constitute an offer which was accepted by performance, and if there was no reserved power of a discretionary nature, I would still be of the opinion that the suppliants are not entitled to the relief claimed for the following reasons:—

Exhibit 2(9) stated:—

As already indicated, it is fundamental that imported goods will not be eligible for subsidy if such goods can be obtained in Canada in sufficient volume and at reasonable prices. Any tendency towards a large increase in the volume of imports of any particular kind of goods will be presumptive evidence that the subsidy is excessive, and any importer who deliberately diverts his business from a domestic supplier to a foreign supplier may be excluded from assistance under the subsidy system.

And Exhibit 3(4) stated:—

(c) Diversion of purchases from domestic to foreign sources of supply, if not justified by a shortage of supplies in Canada, may result in the reduction or elimination of the subsidy with respect to such imports or in the exclusion of the importer concerned from the benefits of the subsidy. No subsidies will be paid if similar goods are available in Canada at reasonable prices.

It is clear from this that subsidies would not be paid if similar goods were available in Canada at reasonable prices.

The suppliants contend first that the last sentence in Exhibit 3(4) (c) above only applies where the first sentence applies because the first sentence overrides the second. And that the expression “as already indicated” in Exhibit 2(9) above refers back to Section 3 of Exhibit 2 (5th par.):—

Importers will also realize that the Board, in carrying out its import policy, must have regard for the position of domestic producers, and diversion from domestic to foreign sources of supply, if not occasioned by a shortage of supplies in Canada, may require reduction or elimination of the subsidy with respect to such imports or exclusion of the importer concerned from the benefits of the subsidy system.

And that this paragraph likewise overrides the paragraph Exhibit 2(9), commencing “As already indicated.”

And that as the suppliants never purchased gasoline in Canada, they did not divert from domestic to foreign sources of supply and therefore the statements that no subsidies will be paid if similar goods are available in Canada at reasonable prices, do not apply to them.

1948
 JOY OIL Co.
 LTD.
 v.
 THE KING
 O'CONNOR J.

I do not agree with that contention. The statements that no subsidies will be paid if similar goods are available in Canada at reasonable prices, are clearly severable from the preceding statements and apply equally to those who had always purchased from foreign sources of supply as well as to those importers who diverted from domestic to foreign.

The evidence establishes that similar goods were available in Canada at the prices quoted by Mr. Hall, and I so find.

Whether these goods were at reasonable prices depends, of course, on the retail ceiling price at which the suppliants could sell gasoline, and that in turn depends on the interpretation of the word "place" in the Orders 010 and 010A of the Oil Controller (*supra*).

The suppliants' contention is that "place" means "place of business" and that they were, therefore, restricted to the price at which they sold on September 30, 1941, at each of their service stations.

The contention of the Oil Controller, the Corporation and the Minister of Finance has already been set out in the correspondence and was that "place" means a "geographical locality," i.e., Montreal and Toronto.

The word "place" has the two definitions quoted by the Minister and as stated in the Oxford Concise Dictionary, when it means a spot devoted to a specified purpose, it is "usually with specification as place of amusement or resort, bathing place." And therefore, conversely, without such specification it is usually a general designation of a city, town, village, hamlet, etc.

P.C. 1195 (Exhibit 15) empowered the Oil Controller:— "Subject to the approval of the Minister, to fix or regulate the price or fix the maximum price or the minimum price at which oil may be sold *in any place, area or zone* by or to any person . . ." Then, pursuant to that power, the Order of the Oil Controller 010A (Exhibit 13A) provided that—"(1) The price to be paid *in any place* shall not exceed the maximum price at which such petroleum product was sold or offered for sale in such place or for delivery to such place on the 30th day of September, 1941, having regard to the quantity purchased . . ."

The words "of business" are not in the order and, giving the words of the section their natural and ordinary mean-

ing, the word "place" means, in my opinion, a geographical locality and not a "place of business." I see no justification for reading into the section the words "of business." And, on the contrary, in view of the power to fix the price in "any place, area or zone," this should not be done.

1948
Joy Oil Co.
LTD.
v.
THE KING
O'Connor J.

This interpretation on the word "place" establishes a ceiling price in each geographical locality, whereas under the statements of the Board a ceiling was established for retail merchants for each retail store, or branch of chain store, and every department of a departmental store.

It is also correct that putting the ceiling on a "place" basis and not on an outlet basis was out of line with the policy announced in Exhibit 2, that payment of a subsidy would permit those who maintained low prices during the basic period to continue to sell at those prices without undue hardship.

But the power to fix maximum prices for gasoline had been given to the Oil Controller nearly nine months before these statements were issued. And the Oil Controller had issued Order 010 on October 21, 1941. P.C. 8527 (Exhibit 12), fixing the Maximum Prices for Goods, was made on November 1, 1941. And the first statement (Exhibit 1) was issued on November 25, 1941. Order 010 was before the Board when they issued these statements because they concurred in the Order. And the statements, so far as fixing prices was concerned, had nothing to do with gasoline because that had already been done. It was the Board which put retail merchants on a different basis from that already existing for retailers of gasoline and changed the policy of a uniform price for each locality to that for each outlet. But there was no change in their policy as to retailers of gasoline. It was in respect to retail merchants that they laid down a different policy.

It is correct that the Oil Controller did not define the various places, areas or zones, but these must have been well known to the industry because Mr. Cottle said that the Order was administered throughout on a place basis and not on an outlet basis.

I therefore reach the conclusion that the price at which the suppliants could sell gasoline was not the price at which they had been selling at each of their stations, but

1948
 JOY OIL Co.
 LTD.
 v.
 THE KING
 O'Connor J.

the maximum price at which it had been sold during the basic period in Toronto and Montreal, which was established in evidence as 32½ cents and 31½ cents, respectively.

The prices quoted by Mr. Hall would be "reasonable prices" having regard to these retail selling prices.

There were, therefore, (assuming the correctness of my holding that "place" in Order 010 and 010A means a geographical locality and not a place of business) "similar goods available in Canada at reasonable prices" during the period in question, December 1, 1941, to July 1, 1942.

Having regard to the Board statement that no subsidies would be paid in those circumstances, the suppliants are not, in my opinion, entitled to the relief claimed.

The alternative basis put forward by the suppliants is the statement in the letter from the Minister of Finance to the solicitor for the suppliants (Exhibit 32) (*supra*), that:—

The question as to whether the Joy Companies are entitled to receive payment of a subsidy would appear to depend upon the interpretation of the word "place" as contained in the Orders above referred to. If, as you contend, this word means "place of business," your clients are entitled to payment of a subsidy.

The suppliants contend that the Minister's letter concludes or carries them beyond the issue of offer and acceptance because he said that they were entitled to payment of the subsidy if "place" meant "place of business." So that if "place" means "place of business" then they are entitled to the relief claimed.

The Corporation was authorized to enter into the Agreement with the Minister and he was authorized to advance funds and could approve or refuse to approve any agreement the Corporation made to pay subsidies. His statement, in my opinion, does not conclude the issue of offer and acceptance nor does it create or add to the liability of the Crown.

For the reasons given, I find that the suppliants are not entitled to the relief claimed in the Petition of Right.

The respondent is entitled to costs.

Judgment accordingly.