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## Canada Update - Highlights of Major Legal News and Significant Court Cases from November 2007 to January 2008

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# CANADA UPDATE – HIGHLIGHTS OF MAJOR LEGAL NEWS AND SIGNIFICANT COURT CASES FROM NOVEMBER 2007 TO JANUARY 2008.

*Brandon Wonnacott\**

## I. SUMMARY OF LEGAL NEWS

### A. CANADA CRITICIZES EXPORT REFUNDS FOR PORK PRODUCTS IN THE EUROPEAN UNION

CANADA'S Minister of Agriculture and Agri-Food, the Honorable Gerry Ritz, recently criticized the European Union's (EU) new policy that reissued subsidies on export pork products. In his statement, Mr. Ritz condemned the EU's decision, stating that all pork producers, including Canada, are locked in financial difficulties.<sup>1</sup> Mr. Ritz went on to say that "[o]ff-loading one's domestic problems on your trade partners – which is the effect of the EU's new subsidies – is not the way to resolve the problem."<sup>2</sup> The underlying fear is that the new subsidies will hurt the attempts at a recovery in the pork market.<sup>3</sup> The EU's subsidies also come as a strong contrast to the current World Trade Organization (WTO) goal of ending all export subsidies on pork, as well as on all agricultural products.<sup>4</sup>

In the meantime, Mr. Ritz discussed how the Canadian government will continue to press the EU to change their subsidies, as well as implementing new programs at home.<sup>5</sup> These programs include business risk management programs implemented in the federal, provincial, and territorial government levels and an industry-government task team that will look for short term measures to help the livestock industry.<sup>6</sup> The EU subsidies went into effect November 30, 2007.<sup>7</sup>

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1. Press Release, Agriculture and Agri-Food Canada, Government of Canada Denounces European Union's Re-Introduction of Export Refunds for Pork Products (Dec. 12, 2007) available at <http://news.gc.ca/web/view/en/index.jsp?articleid=367639&keyword=pork+products>.

2. *Id.*

3. *See id.*

4. *See id.*

5. *Id.*

6. *Id.*

7. *Id.*

## B. CANADA PIPE COMPANY LTD. REACHES AGREEMENT AMID COMPLAINTS

An agreement has been reached between Canada Pipe Company, Ltd., (Canada Pipe) and the Competition Bureau regarding Canada Pipe's rebate program. In 2002, the Competition Bureau began investigating Canada Pipe amid complaints that Canada Pipe had been abusing its dominant market position with its loyalty program.<sup>8</sup> This program required distributors "to purchase all of their cast iron pipe, cast iron fittings and mechanical joint couplings for drain, waste and vent applications exclusively from Canada Pipe to obtain substantial discounts and rebates."<sup>9</sup> With the new "agreement, Canada Pipe has agreed to [offer] a new rebate program that [would] not require the [buyers] to purchase cast iron drain, waste and vent products [only] from Canada Pipe" to receive the loyalty discounts.<sup>10</sup> Commissioner of Competition, Sheridan Scott, expressed his approval of the agreement, stating "[t]he structure of the new rebate program will allow for greater competition in the marketplace by providing more opportunities for entry and expansion by competing suppliers and more choices for distributors."<sup>11</sup> This new agreement ends the Competition Bureau's investigation into Canada Pipe.<sup>12</sup>

## C. GST CUTS

Starting in 2008, the Canadian government cut the Goods and Services Tax (GST) from 6 percent to 5 percent.<sup>13</sup> This is the fulfillment of Prime Minister Stephen Harper's promise during his 2005-2006 campaign to bring the GST down to 5 percent.<sup>14</sup> This cut builds upon the previous cut in July 2006 that brought the GST down from 7 percent to 6 percent.<sup>15</sup> It is predicted that the 2 percent reduction will equal a savings of almost \$12 billion in 2008 for Canadian consumers.<sup>16</sup> In a statement, Prime Minister Harper heralded his plan, stating that "[r]educing the GST is part of our broader plan to ensure Canada's long-term economic growth and prosperity. Under our Government, taxes are headed only one direction: down."<sup>17</sup> Additional relief offered in the new plan includes reducing the

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8. Press Release, Industry Canada, Competition Bureau Reaches Agreement with Canada Pipe Company Ltd. (Dec. 20, 2007) available at <http://news.gc.ca/web/view/en/index.jsp?articleid=370329&keyword=canada%20pipe>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. Press Release, Office of the Prime Minister, Prime Minister Rings in New Year with GST Cut (Dec. 31, 2007) available at <http://news.gc.ca/web/view/en/index.jsp?articleid=370719&keyword=GST+cutJohn> [hereinafter Prime Minister Rings in New Year].

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

lowest personal income tax rate to 15 percent from 15.5 percent and increasing the basic personal amount exempt from income tax to \$9,600, with a planned increase to \$10,100 coming in January 2009.<sup>18</sup> “Since coming [in]to office, the Conservative Government has [decreased taxes] . . . for Canadians . . . by close to \$200 billion [already and has brought] taxes to the lowest level they have been [in Canada] in nearly 50 years.”<sup>19</sup>

## II. SIGNIFICANT COURT DECISIONS

### A. LIABILITY AND LATENT DEFECTS – ABB INC. v. DOMTAR INC.

Domtar purchased a boiler that was “manufactured by C.E. (now ABB and Alstom) for \$13,500,000.”<sup>20</sup> The sales contract included a limiting clause regarding the seller’s liability.<sup>21</sup> C.E. was, however, aware of issues that had arisen in an “H-style” tie weld that the boiler used, and also knew about “hinge-pin attachments,” which would have corrected the issues in the H-style tie weld.<sup>22</sup> Eighteen months after Domtar purchased the boiler, leaks and cracks were found in the boiler’s tubes.<sup>23</sup> “C.E. replaced a number of the H-style tie welds with [the] hinge-pin,” but a permanent solution could not be reached.<sup>24</sup> Domtar had a competitor completely replace the three banks of the boiler at issue and sued C.E. “based on the warranty against latent defects and the duty to inform.”<sup>25</sup> “The Superior Court rejected the latent defect claim, but” in regard to the duty to inform, ruled that C.E. was responsible for \$13,366,583 in damages less a subrogated claim of \$1,578,900, the payment of which another party was held responsible.<sup>26</sup> “The Court of Appeal ruled that C.E. was liable on the basis of both the legal warranty against latent defects and the duty to inform.”<sup>27</sup> The Court also held that Chubb, an insurer of C.E., was “to pay Domtar the amount provided for in the performance bond.”<sup>28</sup> The Supreme Court of Canada held that “[t]he appeals should be dismissed.”<sup>29</sup>

### B. EXPERT USE IN APPEALS – R. v. TROTTA

“The accused, M and A, were convicted of” crimes resulting in the

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18. *Ottawa’s GST cut will result in slightly lower MERs in 2008*, MORNINGSTAR.CA, Nov. 5, 2007, <http://www.morningstar.ca/globalhome/industry/news.asp?articleid=ArticleID112200710341#OTT>.

19. Prime Minister Rings in New Year, *supra* note 13.

20. *ABB Inc. v. Domtar Inc.*, File 31176, 2007 S.C.C. 50, (Nov. 11, 2007), available at <http://scc.lexum.umontreal.ca/en/2007/2007scc50/2007scc50.html>.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

death of their infant son.<sup>30</sup> “M was convicted of second degree murder, aggravated assault and assault causing bodily harm; A, of criminal negligence causing death and failure to provide the necessaries of life.”<sup>31</sup> After their appeal was rejected by the Court of Appeal, new expert opinions and testimony became available.<sup>32</sup> The new opinions and evidence discredited evidence given by an expert that the Crown called and rendered evidence given by a Crown witness unreliable.<sup>33</sup> The Crown, while admitting the conviction for murder should not stand, attempted to substitute the conviction for manslaughter instead of issuing a new trial.<sup>34</sup> The Court found, however, that the tainted evidence could have impacted the jury on both essential elements of the jury charge and that it would be impossible to separate the effect of the contaminated testimony.<sup>35</sup> The appellants then attempted to seek acquittals on the murder and criminal negligence and only have a trial on the remaining counts.<sup>36</sup> The court rejected this claim, holding that there remains some evidence that a jury could use to find the appellants guilty of the charged offenses.<sup>37</sup> The Court ordered a new trial to be held regarding all offenses of which the appellants were convicted.<sup>38</sup>

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30. *R. v. Trotta*, File 30987, 2007 SCC 49 (Nov. 8, 2007) available at <http://scc.lexum.umontreal.ca/en/2007/2007scc49/2007scc49.html>.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*