

CANADA / JUDGMENT

Joy Oil Co. Ltd. v. The King

[1951] SCR 624

COURT

Supreme Court of Canada

DECIDED

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Joy Oil Co. Ltd. v. The King

Collection

Supreme Court Judgments

Date

1951-05-23

Report

[1951] SCR 624

Judges

Rinfret, Thibauudeau; Rand, Ivan Cleveland; Estey, James Wilfred; Locke, Charles Holland;
Fauteux, Joseph Honoré G  rald

On appeal from

Canada

Subjects

State

Decision Content

Supreme Court of Canada

Joy Oil Co. Ltd. v. The King, [1951] S.C.R. 624

Date: 1951-05-23

Joy Oil Company Limited And Joy Oil Limited, (Suppliants) Appellants;
and

His Majesty The King (Respondent) Respondent.

1950: November 27, 28; 1951: May 23.

Present: Rinfret C.J., and Rand, Estey, Locke, and Fauteux JJ.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Crown—Petition of Right—Claim of subsidies on sale of gasoline—P.C. 1195, February 19, 1941—Orders 010 and 010A of the Oil Controller— "in any place", meaning ambiguous—Orders misconstrued—Reference back to Commodity Prices Stabilization Corporation.

By P.C. 1195 of February 19, 1941, the Oil Controller was empowered to regulate the maximum price at which oil (which term included petroleum and gasoline) might be sold "in any place, area or zone." By Order 010 dated Oct. 21, 1941, the Controller directed that from and after that date "the price to be paid in any place shall not exceed the maximum price at which such petroleum product was sold * * * in such place * * * on Sept. 30, 1941, plus any applicable price increase confirmed by this Order * * *". The increase permitted in the price of grade 2 gasoline was one cent per gallon. The appellants operated service stations in Montreal, Toronto and Windsor where they retailed grade 2 gasoline at a price lower than their competitors. They imported their supplies from Trinidad but following the outbreak of war this source was cut off and they were forced to import from the U.S.A. at a higher cost. In November and December 1941, the Wartime Prices and Trade Board issued two statements of policy announcing the coming into force of 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 Sept. 15 to Oct. 11, but that importers could continue to import in the normal manner with the assurance that appropriate subsidies would be provided. The appellants construed the Order to restrict the price increase permitted them to one cent per gallon above the price at which gasoline had been sold at their various "places of business", i.e., each service station. Their application for a subsidy was refused by the Commodity Prices Stabilization Corporation on the ground that there were similar goods available in Canada at a reasonable price and that the price ceiling was not on an individual but on a geographical basis and the appellants could have increased their price to that of their competitors.

An appeal was taken to the Exchequer Court of Canada where the ruling of the Corporation was upheld.

Held: that the expression "in any place" used in the Orders of the Oil Controller of Oct. 1, 1941, and Jan. 28, 1942, was ambiguous and the appellants' application for subsidies had been refused on a misconstruction of such Orders: the judgment appealed from should therefore be set aside and the matter referred back to the Commodity Prices Stabilization Corporation to deal with such claims on the footing that the Orders permitted the appellants to increase their prices only to the extent of one cent per gallon on Sept. 30, 1941.

Appeal from the judgment of the Court of Exchequer, O'Connor J. 1 dismissing suppliants' Petition of Right by which they claimed to be entitled to, and sought to recover from His Majesty, subsidies on motor gasoline imported by them in the period December 1, 1941 to July 1, 1942.

J. J. Robinette K.C. and W. H. Thompson K.C. for the appellants.

Hugh O'Donnell K.C. and Luc André Couture for the respondent.

The judgment of the Chief Justice, Locke and Fauteux JJ. was delivered by:

Locke J.:—The disposition to be made of the present matter depends, in my opinion, upon the construction to be placed upon the language of the Orders of the Oil Controller of October 21, 1941, and January 28, 1942. That the expression "in any place" in these Orders is ambiguous is undoubted and it is accordingly necessary, in order to resolve the question, to examine such of the documents as may properly be referred to in order to construe the language.

It was by Order-in-Council P.C. 2516 made on September 3, 1939, that the Wartime Prices and Trade Board was constituted in the exercise of powers conferred upon the Governor General in Council by The War Measures Act, 1914, and by the Regulations then enacted the Board was empowered, inter alia, to fix maximum prices or margins of profit at which any necessary of life might be sold or offered for sale in Canada by manufacturers, producers, jobbers, wholesalers or retailers. P.C. 3398 made on December 5, 1939, rescinded P.C. 2516 and enacted Regulations which defined more fully the duties and powers of the Board. By Order-in-Council P.C. 2715 of June 24, 1940, a Wartime Industries Control Board was set up, to consist of the Controllers from time to time appointed by the Governor in Council on the recommendation of the Minister of Munitions and Supply, and by Order-in-Council P.C. 2818 made on June 28, 1940, regulations respecting oil were made and George R. Cottrelle appointed oil controller with powers which included that of fixing, with the approval of the Minister of Munitions and Supply, maximum prices or maximum markups at which oil and oil products might be sold or offered for sale. Order-in-Council P.C. 1195 of February 19, 1941, rescinded the regulations respecting oil enacted by P.C. 2818 and substituted new regulations which, inter alia, empowered the oil controller, subject to the approval of the Minister of Munitions and Supply, to fix or regulate the price or fix the minimum or maximum price at which oil might be sold "in any place, area or zone", and further:

to prohibit or regulate any practice or mode of dealing in or with oil or related thereto or used or followed in connection therewith which, in the judgment of the Oil Controller, would or might increase or tend to increase the price of oil to any person or class of persons or which would or might affect or tend to affect the orderly purchase, sale or distribution of oil;

and, subject to the approval of the Minister, to fix or limit the quantity of any oil which might be sold or distributed by any person or classes of persons for any specified use.

Order-in-Council P.C. 6834 of August 28, 1941, rescinded the regulations of the Wartime Prices and Trade Board enacted by P.C. 3998 as thereafter amended. The recital to this order declared in part that it was deemed to be in the national interest that the Wartime Prices and Trade Board regulations should be extended to goods and services not within the jurisdiction of the Wartime Industries Control Board or any of the various controllers that had been appointed:

in order that, in co-operation with other governmental departments and agencies, there may be co-ordination of administrative action in respect of good and services;

and that it was deemed desirable that public control of the prices of goods or services, when imposed, should be exercised by or with the concurrence of the Wartime Prices and Trade Board, and that to effectuate such purpose it was necessary to establish new regulations in regard to the operations of that board. The powers of the board were declared to include that of fixing specific or maximum or minimum prices or markups at which any goods or services might be sold. By a further Order-in-Council P.C. 6835 of August 29, 1941, the order of June 24, 1940 was amended and regulations were prescribed for the operations of the Wartime Industries Control Board and the powers of that board and of its members defined with particularity. The preamble to this Order-in-Council recited, inter alia, that in view of the increasing complexity of the duties of the various controllers and of the problems which confronted them and of the fact that the functions and duties of each of them were to a considerable degree interdependent and correlated, not only with those of other controllers but with those of the Wartime Prices and Trade Board, it was deemed advisable to take further measures to promote co-ordination and integration of the functions and activities of such controllers and by creating a closer relationship between them and the Wartime Industries Control Board and the Wartime Prices and Trade Board "to promote cooperation between them and reduce the possibility of any confusion arising as a result of the exercise and discharge of their various powers, functions and duties." The regulations made were designed to effectuate that purpose. Regulation 8 provided that every controller should have power, subject to the approval of the chairman of the Wartime Industries Control Board and the concurrence of the Wartime Prices and Trade Board to fix maximum prices or markups at which any goods under his jurisdiction might be sold or offered for sale generally or in any place, area or zone. Regulation 10 (iii) authorized each controller to exercise his powers in respect of, or in relation to, such things:

either generally throughout Canada or in any particular province, place, area, zone or locality designated by the Controller.

On September 26, 1941, the oil controller in the exercise of the powers conferred on him by Orders-in-Council P.C. 2818, 1195 and 6835 and, with the approval of the chairman of the Wartime Industries Control Board and presumably the concurrence of the Wartime Prices and Trade Board, revoked his prior order 008 and by order 008A directed, inter alia, that after October 1, 1941, no person should sell any motor fuel (defined in a manner to include gasoline and lubricating oil) other than graded motor fuel as defined by the order. Further terms of the order were designed to restrict and control the quality and quantities of motor fuel sold in Canada required that all such fuel delivered to passenger cars should be obtained only from service stations. Thereafter P.C. 6835 was amended by P.C. 7824 adopted on October 8, 1941, but effective as of August 29, 1941, whereby subsection 1 of section 8 of the prior order was rescinded and the powers of the controllers to regulate prices and to fix maximum or minimum prices declared to be exercisable only with the concurrence of the Wartime Prices and Trade Board in lieu of that of the Minister of Munitions and Supply.

It was under these circumstances that the oil controller issued order No. 010 dated October 21, 1941. While his powers permitted him to establish maximum prices in any "area, place or zone", the price fixed was that to be paid "in any place." In so far as is relevant to the present inquiry the order read:

9. From and after the date of this Order, the price to be paid for petroleum products, or any of them, by any purchaser thereof shall be regulated as follows:
 - (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;
 - (b) For the purposes of the foregoing clause (a) as applied to graded motor fuel, the maximum price applicable in any place on the 30th day of September, 1941, shall be ascertained having regard to the price of motor fuel having the same or the nearest qualities to those specified by Order 008A for either grade of graded motor fuel;
 - (c) No greater price shall be charged to any person for petroleum products or any of them than that provided by paragraph 7 and by this paragraph 9 of this Order.
10. Any person who sells petroleum products, or any of them, at a price greater than is authorized by this Order as applicable at the place of delivery thereof, shall be guilty of a breach of this Order and liable to the penalties provided by law.

The increase permitted to be made in the price of grade 2 motor fuel, being the quality sold by the appellant, was 1 cent per imperial gallon "in any place." This order was approved by the chairman of the Wartime Industries Control Board and of the Wartime Prices and Trade Board.

On November 1, 1941, Order-in-Council P.C. 8527 was adopted on the recommendation of the Minister of Finance establishing what were described as the Maximum Prices Regulations to be administered by the Wartime Prices and Trade Board. The order defined the expression "goods" as including any articles, commodities, substances or things and provided that the maximum price at which any goods might be sold should be the highest lawful price at which a person sold or supplied goods of that nature during the basic period, being the four weeks from September 15, 1941, to October 11, 1941, both inclusive. After providing that no person should after November 17, 1941, sell goods at prices higher than the maximum price for such goods as provided in the regulations, unless otherwise permitted under their provisions, it was provided *inter alia* that:

3. (7) For the purposes of these regulations, each separate place of business of a seller or supplier shall be deemed to be a separate seller or supplier.

Section 4 provided in part 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.

and Section 5(1) that:

Where under any other law any federal, provincial or other authority has jurisdiction with respect to prices, or with respect to the supplying of or trading in goods or services, such jurisdiction shall not be deemed to be superseded by these regulations or by any action of the Board. except that any action heretofore taken or that may hereafter be taken under such jurisdiction which is repugnant to any of the provisions of these regulations or to any action of the Board pursuant to its powers shall be of no force or effect so long as and to the extent that it is so repugnant.

- (2) No such federal, provincial or other authority shall fix or approve any specific, minimum or maximum prices or markups in respect of any goods or services without the written concurrence of the Board.

Heavy penalties were prescribed for any breach of the regulations which were declared to be punishable, either upon indictment or upon summary conviction under part 15 of the Criminal Code, and it was declared that the regulations were to be read and construed as one with the Wartime Prices and Trade Regulations which, as above indicated, had been adopted by Order-in-Council P.C. 2516 on September 3, 1939. On the same date P.C. 8528 rescinded the Wartime Prices and Trade Board regulations made by P.C. 6834 and prescribed new regulations, which included the power to fix specific or maximum prices or markups at which any goods might be sold and extended the powers of the board to take measures deemed desirable in the national interest, for the purpose of restraining increases in the cost of living.

On November 21, 1941, the Wartime Prices and Trade Board published what was called its "Preliminary Statement of Policy", reciting the reasons which had led the government to decide upon a complete control of all prices to become effective on the first of the following month, and outlining generally the steps proposed to be taken to make such control effective. Since the operations of the oil controller were but part of the general scheme of price control and were exercisable only with the approval of the Wartime Prices and Trade Board, the terms of this statement are to be considered. After stating that higher prices would not be permitted than those at which goods were actually sold during the four weeks September 15 to October 11 and that the fundamental duty of the board was to see that prices would not rise higher than the level reached during this basic period, it was said that in particular the prices paid by consumers of goods and services must not rise and that such consumers might not lawfully be charged more for any goods than the highest price charged by the storekeeper or supplier of such goods during that period. It was declared that the price ceiling applied to each individual store department or branch on the basis of its own prices for each separate kind and quality of goods during the basic period, that the lower-price stores were not permitted to raise their prices to the level of the higher-price stores. Those engaged in selling goods at retail were directed that, if necessary, they

must reduce their prices on December 1, so that no price should be higher than the highest price charged by the same store, branch or department of a department store for goods of the same kind and quality during the basic period, and dealers were warned that any price increases above that level would render them liable to prosecution and to have their licences to do business suspended or cancelled. The statement further indicated that if the burden of restraining prices fell too heavily upon an industry the board would recommend to the government that the people as a whole should take a share of the burden and that subsidies be granted or the price of raw materials controlled. It was stated that it was intended to establish a government corporation to deal with cases in which it might be deemed advisable to stabilize raw material cost. Dealing with those engaged in the import of goods the statement declared that the whole question of imports in relation to the price ceiling was being studied by the board and that a statement of policy might be expected in the near future.

On December 2, 1941, the board issued a further statement of its import policy. Since it is contended by the appellants that in the circumstances of the present case they had acquired contractual rights as against the Crown, its terms are of importance. Dealing with goods imported for civilian purposes, within which class those of the appellants fell, it was said that the general principle was that imported goods would in general cost the importer no more than was appropriate in relation to retail selling prices and 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 and after December 1, 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.

Having said this, however, the above quoted statement was followed immediately by a clause stating that the board reserved the right to exclude any goods or kind of goods from the import subsidy, that it could not be expected to approve subsidies if the increase in import prices was not of significant proportions for those concerned, but that if the increased cost was greater than the amount which could reasonably be expected to be absorbed the board, acting whenever possible on the advice of its administrator, would set the subsidy at a reasonable level. It was further declared that importers must realize that the board in carrying out its import policy must have regard for the position of domestic producers and that:

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.

It was said further that subsidies would be paid on all eligible goods imported through normal trade channels for eventual sale to domestic consumers and that claims for subsidies were to be submitted monthly by all importers concerned. As to imports by retailers within which class the appellants fell, the statement proceeded:

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.

Dealing with imported fuel, it was said that, inter alia, petroleum and its products "will be dealt with on much the same basis as raw materials if circumstances so require." Having said that the document represented the most comprehensive general statement which could be made, importers were urged to have confidence that the board and the Commodity Prices Stabilization Corporation (a Crown company later organized) would deal with individual problems "fairly and reasonably" and that at that time the important thing was that the import trade should be continued in accordance with past practice, even if the present import prices involved an actual loss to the importers concerned and that such subsidy adjustments would be made retroactive to December 1. The statement declared further that the organization of the Commodity Prices Stabilization Corporation was proceeding and that it would supervise and handle subsidy arrangements in accordance with procedures to be thereafter established.

Order-in-Council P.C. 9870 of December 17, 1941, authorized the Minister of Finance to cause to be incorporated and organized a private company under the Companies Act to be wholly owned by His Majesty in right of the Dominion of Canada, to be known as Commodity Prices Stabilization Corporation, with an authorized share capital:

for the purpose of facilitating, under the direction of the Wartime Prices and Trade Board, the control of prices of goods, wares and merchandises in Canada.

The Board was authorized from time to time to delegate such of its powers to the company as it might deem advisable and the Minister of Finance was authorized to execute an agreement between His Majesty and the company in the terms of a draft annexed to the Order-in-Council, with such changes that he might consider proper, and from moneys appropriated by Parliament under the War Appropriation Act, 1914 the minister was authorized to direct advances from time to time up to the amount of \$10,000,000 for the purpose of paying, inter alia, sums by way of subsidy. The proposed agreement which was apparently executed on January 6, 1942, authorized the company in the discharge of such duties and responsibilities as might from time to time be delegated or committed to it by the Minister of Finance or the Wartime Prices and Trade Board, to pay such moneys by way, inter alia, of subsidies:

to any person, firm or corporation as may be deemed advisable in accordance with the principles stipulated from time to time by the Wartime Prices and Trade Board and approved by the Minister.

While this agreement was rescinded and replaced by a new agreement made on the following July, the substituted document in like manner required that any payments by way of subsidy should be in accordance with the principles formulated from time to time by the Wartime Prices and Trade Board.

The appellant companies were at the time of the outbreak of the Second World War and in the following years engaged in operating service stations in Montreal, Toronto and Windsor for the retail sale of gasoline and lubricating oils. Joy Oil Limited, incorporated in the Province of Quebec, operated in Montreal a marine terminal for the purpose of receiving gasoline by ocean tankers and distributing it to their service stations in the city of Montreal, and Joy Oil Company Limited, an Ontario corporation, operated a terminal in Toronto for the purpose of receiving supplies of gasoline by boat and also in tank cars for its service stations operated in the Toronto district. The gasoline sold by the Quebec company during the years 1940 and 1941 had been imported by water from Trinidad. This was also the source of the gasoline sold at its filling stations in Toronto throughout the year 1940 and for a portion of 1941. In the latter year, however, owing to the activities of enemy submarines, this source of supply was shut off and, according to the appellants, it was necessary for them to resort to the United States market for their supplies, this resulting in a large increase in their costs. The oil controller's order 010 provided that from and after its date (October 21, 1941) the price at which graded motor fuel might be offered for sale in the provinces of Ontario and Quebec should not exceed the maximum price at which such product was sold or offered for sale in such place on the 30th day of September, 1941, plus one cent per imperial gallon, the increase provided by the order. On that date the prices charged by both appellants for gasoline to consumers were substantially less than those charged by the large oil companies operating in Canada and it is this fact which renders the interpretation of the word "place" in the orders of the oil controller of decisive importance. In Quebec the price charged was 2.7 cents a gallon less than the prices charged by the large companies, while in Toronto it was approximately 4.7 cents lower.

The appellant companies interpreted order 010 as enabling them to increase the prices charged at each of their service stations by one cent above that charged at such station on September 30, 1941, and acted on that understanding. P.C. 1195 authorized the appointment of a deputy oil controller to have all of the powers of the oil controller, subject to any restrictions thereof which the latter might from time to time impose and subject in all cases to review by him. Charles E. Austin, the vice-president of both of the appellant companies said that, at a time which he thought preceded the date of order 010 having heard a rumor that an order was to be made, he had an interview with Stewart, the deputy oil controller, who informed him that each company was bound by its own prices which had been in effect, that the controller was following the policy of the Wartime Prices and Trade Board, that each station was to be considered as a unit, and that the appellant companies could not raise their prices to the level of the other companies. Stewart was not called as a witness: Austin's evidence, however, as to the date of this discussion is vague and unsatisfactory. Whatever may be said as to its admissibility if the discussion took place following the making of the order, it was clearly inadmissible if it was before that date. On October 28, 1941, a week after the order had been made, the Joy Oil Company Limited wrote to

the oil controller apparently asking an increase in their quota of supplies. The letter was not put in evidence and its contents can only be inferred from the written answer of Stewart as deputy oil controller on November 6, 1941. That letter referring to earlier orders of the board said in part:

Furthermore, your application is based on a complete misunderstanding of the Order. You apparently entertain the view that a quota can be fixed for your Toronto division regardless of the gallonage dispensed at any unit within the Division. Paragraph 6 of Order 007 has not been affected by the amendments contained in 007A and 007B.

This paragraph makes it clear that every station operated by your Company is prohibited from selling more than its particular quota. If any station operated by your Company is permitted to sell more gasoline than the quota applicable to such station, the result is clearly a breach of the Order.

Your application for an increased quota for the Toronto Division cannot be entertained as it is utterly inconsistent with the terms and principles of the Order. Any application made under paragraph 4D of Order 007B must be in respect of an individual station but, as mentioned above, any such application cannot be granted if based only on the consequences of competitive practices.

According to Austin, after receiving this letter he was referred by Stewart to Frederick G. Cottle, a chartered accountant, apparently acting as executive assistant to the oil controller, and was informed by him that he agreed with Stewart's construction of the earlier orders and that the regulations of the oil controller were based on treating each gasoline station as a separate unit, both in so far as prices and the allocation of gasoline under the rationing order were concerned. This evidence was admitted without objection. Cottle, called by the Crown, while admitting the discussion as to the earlier orders referred to in the letter of November 6, 1941, said first that he could recall no discussion on that occasion or any other occasion with Austin regarding prices and that he had not told or would not have told him that individual stations were the basis for the administration of order 010 "for the simple reason that it was not true". When Austin, when recalled later, repeated the statement as to what Cottle had said and the Crown was permitted to recall Cottle he then said that he had no recollection at any time of ever discussing the meaning of order 010 with Austin and that, if he had, he was positive he would never have given the interpretation to him that he says. Cottle's evidence, when read as a whole, appears to be indecisive and more in the nature of argument than a positive statement on the point. The learned trial judge, however, made no finding as to credibility as between these witnesses.

The claims advanced by the appellants in the present matter are in regard to their operations between December 1, 1941, and the latter part of June 1942. According to Austin, when supplies of gasoline imported from Trinidad were no longer available, he went to the oil controller to enlist his assistance in purchasing supplies and approached all the larger oil companies in an attempt to buy from them but without success, whereupon both companies commenced to import gasoline from the United States. According, however, to various witnesses employed by the larger oil companies, they had gasoline available for sale and the learned trial judge accepted

the evidence of Frank G. Hall, a director of the Imperial Oil Limited, to the effect that graded gasoline was available which the appellants could have purchased at any time during the period in question at a tank wagon price of 17½ cents in Toronto and 17 cents in Montreal, both prices exclusive of taxes. The contention of the appellants is that at these prices they could not have maintained the prices at the figure authorized by orders 010 and 010A of January 28, 1942, which revoked the prior order and substituted other regulations. The price increase in the latter order was, however, the same as that in order 010 for graded motor fuel, that is one cent per imperial gallon above the price in effect on September 30, 1941 "in such place". The necessity of importing from the United States substantially increased the cost of gasoline to both of the appellants and it is this fact which gives rise to the claims for subsidy.

By letter dated May 23, 1942, the appellant Joy Oil Company Limited filed its first application for a subsidy, explaining the circumstances which made it necessary to import their supplies from the United States. By letter dated July 14, 1942, the Commodity Prices Stabilization Corporation Limited wrote in reply saying that the applications were rejected: the ground assigned for the rejection was that it had been stated in the statement of import policy of the Wartime Prices and Trade Board that no subsidy would be paid if similar goods were available in Canada at reasonable prices, that the information before the Corporation indicated that the maximum retail price of Grade 2 gasoline at Toronto, as established by the oil controller, was 32 • 5 cents per gallon and that, accordingly, the applicants could have purchased supplies in Toronto at prices which would have allowed them to sell at this level and realize a fair profit. The statement referred to in this letter in the declaration of policy made by the Wartime Prices and Trade Board on December 2, 1941, was that it was fundamental that imported goods would not be eligible for subsidy if such goods could be obtained in Canada in sufficient volume and at reasonable prices, and followed earlier statements in the order that, as to retailers, those who maintained low retail prices during the basic period would be able to continue to sell at those prices without undue hardship, and urged importers to have confidence that the board and the Commodity Prices Stabilization Corporation would deal with individual problems fairly and reasonably. Thus, while disclaiming the applicability of one term of the Wartime Prices and Trade Board policy statement, the corporation insisted on the application of another as an answer to the claim. A considerable correspondence followed between the Commodity Prices Stabilization Corporation Limited and the solicitors for the appellants. The corporation maintained its stand and its grounds for the position taken. Ultimately, by letter dated November 18, 1942, the appellants, through their solicitors, made a lengthy submission to the Honour- able the Minister of Finance in which their position was fully stated. The Minister replied to this letter on March 11, 1943, saying that While the statement of policy of the Wartime Prices and Trade Board clearly referred only to goods affected by the Maximum Prices Regulations of December 1, 1941, he considered that vendors of petroleum products would also be entitled to claim for payment of subsidies if the same were necessary in order to enable them to sell at the selling price established under the oil controller's orders 010 and 010A. The letter further said in part:

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.

and, after discussing the dictionary definition of the word "place", said that the question as to the interpretation to be placed upon the word, as used in the orders, had been submitted to the solicitor of the Wartime Prices and Trade Board for his opinion and that he had expressed the view that the word, as used in the orders, did not mean "place of business" but rather a geographical locality, and that accordingly the Minister had decided not to intervene.

The claim of the appellants is for a stated sum by way of subsidy on the footing that the Crown became indebted to them in these amounts. The claims are said to be based upon contract on the footing that there was an offer or promise extended to the appellants by an authorized agent of the Crown upon which "the suppliants acted to their detriment". By this, however, I understand it is meant that the statement and declarations of policy by the Wartime Prices and Trade Board were in effect an offer which had been accepted by them by importing supplies from the United States and selling them at the restricted prices. I agree with the conclusion of the learned trial judge that the claim cannot be sustained on this basis. The further contention that such a contractual relationship was "ratified" by the Minister of Finance in his letter to the solicitors for the appellants is not, in my opinion, well founded. I think that the letter was clearly not intended to be more than an expression of the Minister's view as to the decisive point in the matter and to indicate his intention to abide by the advice he had received from the solicitor for the Wartime Prices and Trade Board.

I am, however, of the opinion that these conclusions should not dispose of these claims. Their rejection was based upon the grounds stated in the letter from the Commodity Prices Stabilization Board to the appellants of July 14, 1942, and in reliance upon the interpretation placed by the corporation on the language of the orders of the oil controller. If the proper interpretation of those orders is that the "place" referred to was the individual filling stations of the appellants in Toronto and Montreal and not those cities respectively, it is plain that there has been no consideration given to the claims for subsidy on their merits. The word "place" and the expression "in any place" are clearly capable of either meaning. The order of the oil controller does not fall within subsection (b) of section 2 of the Interpretation Act (R.S.C. 1927, c. 1) and the provisions of that statute do not apply to its interpretation. In my opinion we are entitled, in order to assist in determining the meaning to be assigned to this language, to consider, in addition to the other terms of the orders, the Orders-in-Council which vested the powers in the controller in the exercise of which the order was made, the terms of the Orders-in-Council which constituted the Wartime Prices and Trade Board and the other agencies set up for the purpose of controlling prices in Canada and the statements of policy and the regulations made by or on

behalf of these various government agencies. The office of the oil controller constituted by Order-in-Council P.C. 2818 was merely to be one of the instruments used by the Wartime Prices and Trade Board to control prices and margins of profit in Canada. The power vested in the controller by P.C. 1195 to prohibit or regulate any mode of dealing which "would or might increase or tend to increase the price of oil to any person or class of persons" did not merely vest him with these powers but contemplated their exercise and this overall purpose of the plan was made manifest in all of the orders and regulations dealing with the subject of control. The oil controller was not to conduct a species of control differing from that to be applied to the sale of all other commodities or to act independently of the Wartime Prices and Trade Board, except to the extent that that body should permit. The preamble to P.C. 6835 of August 29, 1941, which prescribed regulations for the Wartime Industries Control Board, stressed that the functions and duties of the various controllers were interdependent and correlated not only with those of other controllers but with the functions and duties of the Wartime Prices and Trade Board, and that it was desirable to take further measures to promote co-ordination and integration of their activities by creating a closer relationship between them and the Wartime Industries Control Board and the Wartime Prices and Trade Board. It was with this end in view and with the purpose of ensuring uniformity of policy that the orders of the oil controller were made subject to the approval of the Wartime Prices and Trade Board in lieu of that of the Minister of Munitions and Supply, a change affected by P.C. 7824 of October 8, 1941. It is, I think, clear both from the language of P.C. 1195 and that of regulation 10 (iii), enacted by P.C. 6835, that the word "place" is not to be construed as synonymous with the words "area" or "zone" used in the former Order-in-Council, or with any of the words "area, zone or locality" used in the regulation. The fact that these words were used in addition to the word "place" indicates, in my opinion, a restricted meaning for the latter term. If the increase in price to be permitted by the order was one cent above the maximum charged in the cities of Toronto or Montreal or other centres of settlement on September 30, 1941, one would expect that, if not mentioned by name, the areas would have been at least generally defined as the city, town, village or locality within which the businesses affected were carried on. When, shortly after order 010 was made, the appellant Joy Oil Company Limited asked for an increased quota of supplies for its Toronto division, the controller, refusing the request, replied that allocations could not be made in this manner, but that every station operated by the company was prohibited from selling more than its particular quota. The orders which affected this aspect of the matter antedated order 010 and were not introduced in evidence, but the ruling made by the controller's letter of November 6, 1941 indicated the intention, at least from the standpoint of regulating supplies, of treating each filling station as a separate unit.

The matter is not to be determined, in my opinion, merely by deciding what was the intention of the controller. As Phipson (8th Ed. p. 97) puts it, in construing a written document, the question is not as to the meaning of the words alone, nor the meaning of the writer alone, but the meaning of the words as used by the writer. Some assistance is, I think to be obtained from other terms of the orders. Order 010 defined consumer as any person who acquires petroleum products for use only and not for the purposes of resale, and by paragraph 7 provided that the price to be paid by a

consumer for graded motor fuel delivered by tank wagon should be one cent per gallon more than the dealers' tank wagon price applicable at the place of delivery. The price referred to was that in effect on September 30, 1941, and the place of delivery the consumer's premises. I think the same meaning is to be assigned to paragraph 9 of that order. The place referred to there was also, in my opinion, the place of delivery which, in the case of service stations selling gasoline, was their premises where delivery was made to the motor car of the consumer. To construe the order otherwise, as applied to the present case, would restrict dealers who delivered motor fuel to the premises of consumers to an increase of one cent over their price at such place on September 30, 1941, while permitting the appellant companies at their service stations to increase their prices for gasoline delivered to motor cars by 5.7 cents a gallon in Toronto and 3.7 cents a gallon in Montreal. While order 010 preceded P.C. 8527 by ten days and the latter order provided that the various provisions of its paragraph 3, which included the provision that for the purpose of the regulations each separate place of business of a seller should be deemed to be a separate seller, should not apply to any price fixed by some other authority with the written concurrence of the board, I think that the order, the preliminary statement of policy and the further statement of import policy may be considered as aids to the construction of order 010 as well as order 010A. The regulations which had been enacted provided for the closest liaison between the various controllers and the Wartime Prices and Trade Board, and the chairman of that board had concurred in the order and was thus aware of its terms. It must be assumed that the Wartime Prices and Trade Board was following a consistent policy with all sellers of goods and not favouring some vendors of gasoline over other retailers by permitting large increases in their maximum prices. The fact that it was made clear by P.C. 8527 and the subsequent statements that permitted increases were to be made on each individual seller's price during the basic period supports rather than detracts from the appellants' contention. That the matter was dealt with more specifically than had been done by order 010 does not alter my view as to the construction of the former document. It was not merely the appellants who construed the oil controller's order in this way; I think it was so construed by those directing the Wartime Prices and Trade Board. It is also significant, in my opinion, that on January 28, 1942, when the oil controller had before him P.C. 8527 and the declarations of policy of the Wartime Prices and Trade Board, the expressions "in any place" and "in such place" were again used. I think if, at that time, there had been any intention to treat the matter of permitted increases in the price of oil on a different basis than all other commodities, the oil controller would have taken pains to see that the order said so in clear language.

The appellants in the present matter are not, in my opinion, in the same favourable position as the taxpayer in *Pioneer Laundry and Dry Cleaners Ltd. v. Minister of National Revenue* 2, where there was a legal right to an allowance for depreciation. Here, I do not think the appellants have an enforceable right to a subsidy. I, however, consider that they are entitled in law to have their claims considered upon a proper basis. There has been here no exercise of discretion but merely a rejection of the claims based on a misconstruction of the orders of the oil controller. I would set aside the judgment appealed from and direct that the matter be referred back to the Commodity Prices Stabilization Corporation to deal with the claims for subsidies advanced in this action, on

the footing that the orders of the oil controller permitted the appellants to increase their prices only to the extent of one cent per gallon on September 30, 1941.

I agree with the disposition of the costs proposed by my brother Rand.

Rand J.:—This appeal concerns a claim made against the Crown for subsidies on gasoline imported from the United States between December 1, 1941 and July 1, 1942. The importers were companies which, at their own filling stations, sold directly to consumers in Toronto, Montreal and Windsor. They had, for some years, brought the gasoline in chiefly from Trinidad, and the retail price at which it was sold ranged between 2½c and 3½c a gallon under that of their competitors. Owing to the war, the supply from Trinidad was cut off, and they were forced to enter the higher price market of the United States.

Under The War Measures Act, Order-in-Council P.C. 1195 of February 19, 1941, amending a previous order of 1940, was issued dealing, among other things and subject to certain approvals, with petroleum products and empowering the oil controller,

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;

Acting under that authority, the controller, by order No. 010 of October 21, 1941, fixed maximum prices at which oil products could be sold. Clauses 7 and 9 were as follows:

7. Subject to paragraph 8 of this Order, the tank waggon price to be paid by a consumer for graded motor fuel delivered by tank-waggon shall be one cent per imperial gallon more than the dealer's tank-waggon price applicable at the place of delivery.
9. From and after the date of this Order, the price to be paid for petroleum products, or any of them, by any purchaser thereof shall be regulated as follows:
 - (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;
 - (b) For the purposes of the foregoing clause (a) as applied to graded motor fuel, the maximum price applicable in any place on the 30th day of September, 1941, shall be ascertained having regard to the price of motor fuel having the same or the nearest qualities to those specified by Order 008A for either grade of graded motor fuel;
 - (c) No greater price shall be charged to any person for petroleum products or any of them than that provided by paragraph 7 and by this paragraph 9 of this Order.

As of November 17, 1941, general price control was set up by Order-in-Council P.C. 8527 which excepted from its operation prices fixed by any federal agency and approved by the chairman of the Wartime Prices and Trade Board: within that exception were the maximum prices for petroleum products.

On December 2, 1941 and later, on January 1, 1942, the Prices Board issued statements of policy on matters arising out of the sale of imported goods for civilian purposes. The former laid down the general principle that imported goods would cost the importer no more than was appropriate to the retail ceiling prices, and declared 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 and after December 1, 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.

The Board reserved the right to exclude any goods from the subsidy and "to adjust the amount of that subsidy from time to time as may be fair and reasonable in the circumstances".

Consideration was to be given, however, to "forward commitments" entered into after the date mentioned. It was emphasized that the board would not approve subsidies where the increase in import prices was not of significant proportions for those concerned; that increases which the importer or his trade customers could absorb without "undue hardship" should not "even" be brought to the attention of the board. If, however, the increased cost was greater than could be expected to be absorbed, the board would set the subsidy at a reasonable level. It stated that if foreign suppliers should attempt to raise prices unduly, the subsidy might be withdrawn as to their goods.

More specifically it declared that the retailer who found his import prices to have risen "significantly above the level which prevailed for goods sold by him during the basic period" might submit a claim to the board, and that the board would endeavour to measure the subsidy in such a way that the retailer would "receive his goods at a cost which is reasonable in relation to his retail ceiling price". It was declared also to follow that "those who maintained low retail prices during the basic period" would be able to continue to sell at those prices without undue hardship. In some cases, it might be more suitable to adjust subsidy by reference to average costs of a number of retailers.

Finally, importers were urged to have confidence "that the board and the Commodity Prices Stabilization Corporation (not at that time incorporated) will deal with individual problems fairly and reasonably. 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". The statement of January 1, 1942, involved no change in principle but clarified and amended the earlier one in certain details. By it, also, certain goods previously

eligible for subsidy were excluded. The trade was notified that no subsidies would be paid if similar goods were available in Canada at reasonable prices. It was stated that:

No definite rules can be laid down for raw materials, including fuel. Each commodity may require separate treatment on the position of the industry as a whole after intermediate selling prices of wholesalers, secondary manufacturers and primary manufacturers have been adjusted.

On December 17, 1941, Order-in-Council P.C. 9870 authorized the organization of a Crown company under the Companies Act to be known as "Commodity Prices Stabilization Corporation" to be the agency for facilitating, under the direction of the Prices Board, price control generally, including the payment of subsidies, as part of the general price stabilizing policy. With this corporation, the Crown entered into an agreement by which accountable advances were to be made and by which the company was authorized in the discharge of such duties and responsibilities as might from time to time be delegated or committed to it 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 in accordance with the principles formulated from time to time by the Wartime Prices and Trade Board and approved by the Minister.

Subsequently, on July 7, 1942, by Order in Council P.C. 5868, the corporation was authorized by section 1, ss. (2):

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.

The appellant companies continued to import gasoline from the United States during the period mentioned and submitted statements of costs and prices in support of an application for subsidy. It was declined on the ground that paragraph 9 of the controller's order 010 and paragraph 8 of the controller's order 010A established maximum prices applicable generally in geographical places; that the prices of the company's products as of September 30, 1941 were below the maximum prices in the three cities mentioned; and that they could have purchased gasoline in Canada at a price which would have enabled them to realize a reasonable profit within the maxima so prescribed. The companies, contending that their own highest prices had become fixed as maxima, laid their complaint before the Minister of Finance. His reply contains the following paragraph:

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 claims asserted in this proceeding are based on contract: they treat the statements of policy as contractual offers made by an authorized agency of the Crown and accepted by the action of the companies in continuing to import; and the letter of the Minister, as creating a contractual obligation conditional upon the interpretation of the language of the orders as meaning their individual selling stations. These contentions were rejected in the Exchequer Court 3, and I agree with that result. The short answer in each case is that neither the Board nor the Minister is shown to have evidenced the slightest intention of entering into contractual obligations or of establishing legal relations of any kind whatever. The language quoted from the declaration of policy shows that it was what it purported to be, a statement of general principles to be followed; and its qualifications and reservations and its references to modifications which would affect the amount or payment of subsidies demonstrate the purpose to perform the task of meeting price consequences of the emergency imposed by the government on the corporation by an administration of practical and fair measures carried out in good faith and according to the corporation's best judgment in the light of all the circumstances. It was this the Minister had in mind in his reference to the price maximum; but that he intended to take the matter out of its ordinary channels and place the issue of the subsidies as claimed on the interpretation of the clauses mentioned, is quite unwarranted. Conceding the interpretation to be as urged by the companies, many other factors would remain on which the decision of the corporation must be based, and there was neither intention nor authority in the Minister to supersede that jurisdiction.

But the interpretation adopted played a significant part in the rejection of the claim, and it must, I think, be examined. Admittedly the general price order fixed actual prices wherever they were being charged during the basic period, and expressly provided that each separate place of business should be deemed a separate seller or supplier. In a previous order of the oil controller, a quota had been placed on permissible sales which likewise applied to the individual place of sale such as, for example, a filling station. It is in part against this background that the orders of the oil controller should be viewed even though the first, 010, was issued prior to the general order. The Prices Board had been in existence since 1939 and as individual price controls were in substance merely particular cases of the general control, the companies were entitled to assume that the regulation of prices on petroleum was intended generally to be similar to that of the broader measure.

It is seen that the words "place, area or zone" in the authorizing regulation of P.C. 1195 apply to all goods placed under controllers. It is unquestionable that they were intended to meet the exigencies of widely differing commodities, and that they were not themselves to be used in the specification of a special order. It was meant that the controller could prescribe the maximum prices in relation to any particularly described "place, area or zone", not that these words themselves were to be put to such use. When, then, the word employed is so general as to fit many different particulars, we must have regard not only to the evidence of its meaning as afforded by other provisions of the order, but, as well, the fact that the order was to be read and interpreted by laymen as a practical business directive with the background of the general control; and that its interpretation must respect the meaning that could fairly and reasonably be

given it by the trade, not something that lay hidden in the mind of the draftsman.

Of the internal evidence in order 010, it will be noticed that paragraph 7, which I have quoted, provides that the tank-waggon price to be paid by a consumer shall be one cent a gallon more than the dealer's tank-waggon price "applicable at the place of delivery." Now the place of delivery to a dealer is generally, or certainly includes, a filling station. It would be an extravagant use of business language to say that the place of delivery to a dealer at his filling station by tank-waggon was "at Toronto". It is a reasonable interpretation of that language that what is intended is the actual point of delivery, not some indefinite geographical area. There are hundreds of gasoline pumps set up near farm houses along the main highways all over the country which are supplied by tank-waggon; what could their "places of delivery" be except the farmer's yard? Then clause 10 provides a penalty for any person who sells petroleum products at a price greater "than is authorized by this order as applicable at the place of delivery," i.e. to a dealer or a private consumer at a filling station. Clause 11 likewise refers to the authorized price "at the place of delivery". Clause 8(1) of order 010A refers to "delivery to such place" and clause 9, providing a penalty, contains the same language "at the place of delivery" as clause 10 of 010.

Against this, the preposition "in" is urged as excluding the particular point of a sale or delivery, and no doubt it lends itself somewhat to that view. But there are other considerations to which that circumstance leads. In Toronto the appellants have 16 service stations. The larger oil companies do not themselves sell to the retail trade, and the retail prices are fixed by the proprietors of the individual stations. There is no evidence that a uniform price is maintained throughout the city even of the gasoline supplied by any one of the large refiners, yet the order, on the interpretation given by the corporation, would fix as a maximum retail price the highest charged by any service station in the city on September 30, 1941. This, ordinarily superseded by competition, might easily be material in the presence of quotas and short supply.

The price, not only of retail but of tank-waggon and rail or water delivery in tank quantities, was also envisaged, and it is obvious that if the appellants were compelled to purchase in Canada, they would purchase on a large scale basis. What were the means open to them to determine the maximum wholesale price, say, in Toronto? They had none themselves of ascertaining it, and their competitive relation may be assumed to have been such as was not conducive to exchanges. Not being refiners, they would have to submit themselves to their competitors and as their purchases would call for greater importation of crude oil, the only difference in the international aspect would be the addition to the monetary exchange of the cost of refining in the United States; but however repugnant all this might have been, if the circumstances were such as to make the necessity clear, they would have had to submit to it.

These considerations, in the setting of the total control and the generality of the language used, justified the companies in concluding that the maximum price was intended to be that of the individual place of sale or delivery. But even if that had not been so, the restriction to that at which the product was sold, say, "in" Toronto, implied, as sold by the applicant for subsidy. He would know only his own maximum price and, at the most, some of those publicly advertised. In the large centres, the maximum geographically could have been ascertained and announced by

the controller rather than to have had it disclosed at a trial by private witnesses after the event; and it would have been out of the ordinary course of public regulation to charge the applicant with responsibility for discovering business facts of his competitors.

The final question is whether, under the terms of the various orders, these appellants have acquired any right which can be recognized as of a juridical nature. I think it indisputable that keeping in mind the broad discretionary authority vested in the corporation, the times, the unprecedented control of business, the absolute necessity for fair, equal and impartial treatment in matters so immediately affecting the fortunes of individuals, a duty arose to enter upon the adjudication of a claim for subsidy in good faith and upon the basis of its relevant considerations. That their range would be spacious does not convert the power into a privilege of acting or not acting at pleasure: *Julius v. Bishop of Oxford* 4.

That duty has its correlative right in the individual. In adjudicating, the corporation must proceed within and on proper interpretations of the administrative legislation, and where, as here, it has misconstrued a material provision, its adjudication is vitiated and its conclusion nullified.

The appeals should therefore be allowed and the matters referred back to the government to pass upon the applications in the light of the interpretation given to the order and all other proper circumstances.

In view of the fact that this declaratory relief was not asked for and the claims as submitted must be rejected, the appellants should recover one-third of their costs in both courts.

Estey J.:—The appellants, incorporated in 1934, imported gasoline from Trinidad and sold it to consumers at a price lower than that of their competitors. After the outbreak of war, and because of the scarcity of shipping facilities, they were forced to discontinue importation from Trinidad, but did so from the United States, where prices were so much higher as, in their opinion, to justify an application to the Commodity Prices Stabilization Corporation Ltd. for a subsidy covering the period between December 1, 1941, and July 1, 1942. The amount claimed was \$459,845.73, with interest from September 15, 1942.

While the appellants are two separate companies, one carrying on business in the province of Quebec and the other in the province of Ontario, the issues raised are identical and for convenience only the claim of the Joy Oil Company Limited, arising out of its Toronto business, will be discussed. In Toronto it operates a marine terminal and sixteen service stations.

The Joy Oil Company Limited based its claim for a subsidy upon three statements issued by the Wartime Prices and Trade Board, which they construe as an offer to pay a subsidy accepted by them in continuing to import gasoline and sell it at the price fixed by either the oil controller or the Wartime Prices and Trade Board. They contend that in this way a contract was made which was ratified by the Minister of Finance in his letter to the solicitors for the suppliants dated March 11, 1943.

The first of these statements was issued on November 21, 1941, entitled "Preliminary Statement of Policy", the second, December 2, 1941, entitled "Import Policy", and the third, dated January 1, 1942, entitled "Statement on Import Policy." These are lengthy statements and need not here be reproduced. It is sufficient to observe that they are written in neither the language of an offer nor that of orders or documents purporting to create rights. They are rather statements of policy, introducing price control, giving the reasons that made it necessary, and an explanation of how it would be carried out. They also constitute an appeal that because of the necessity for, the magnitude of and the difficulty involved in price control, it could only be successful if all co-operated. Throughout it is clear that these documents are related to others. This appears from the opening paragraph of the first statement:

On December 1, 1941, there will come into force in Canada a complete control of all prices. Higher prices will not be permitted than those at which goods were actually sold during the four weeks September 15 to October 11. This far-reaching action will affect everyone. It is in the common interest of all. It has an essential part to play in the successful carrying on of the war. They specifically make reference to importers, and the language, rather than constituting an offer, indicates that the importer who follows the outline contained in these statements of policy will be dealt with "fairly and reasonably." This is particularly evident in para. 9 of the statement of December 2, 1941, which reads, in part:

9. The above represents the most comprehensive general statement which can be made. Importers are urged to have confidence that the Board and the Commodity Price Stabilization Corporation will deal with individual problems fairly and reasonably * * *

A reading of these statements leads to the conclusion that subsidies were to be paid, not on the basis of a contract, but upon the basis of a fair and reasonable consideration of each application made therefor.

The contention that the letter of the Minister of Finance dated March 11, 1943, constituted a ratification cannot be maintained. Under the authority hereinafter quoted (Order-in-Council P.C. 9870) the Commodity Prices Stabilization Corporation Ltd. could agree to pay only such sums by way of subsidies as it "deemed advisable" and even then the agreement was not binding "except with the approval of the Minister of Finance." The corporation had refused the subsidy and, therefore, there was no proposed agreement that could be approved. The letter was an answer to a complaint suggesting that the appellants had been discriminated against which, in effect, asked that their application receive fair and equitable treatment. The Minister reviewed the facts, particularly the opinion received by the corporation relative to the word "place," and concluded that he could not "interfere with the decision of the Commodity Prices Stabilization Corporation that your clients are not entitled to payment of the subsidy claimed." In these circumstances, even if the authority to approve could be construed to include that to ratify, the Minister did not purport either to approve or to ratify, nor, indeed, was there any agreement which he could approve or ratify.

It is necessary, therefore, to determine whether the appellant is entitled to a subsidy apart from any question of contract. These statements must be read and construed with the Orders-in-Council already passed relative to the creation of (September 3, 1939) and the powers conferred upon the Wartime Prices and Trade Board; to the appointment of (June 28, 1940) and the powers conferred on the oil controller and his order 010, October 21, 1941; to the creation of (June 24, 1940) and powers conferred upon the Wartime Industries Control Board; as well as the steps taken by these respective bodies relative to a fixing of prices and, in particular, with respect to gasoline. That these respective bodies were duly created and vested with all the powers they have exercised in relation to this litigation, as well as the fact that their efforts were coordinated and at all relevant times they were acting in concert, is clearly established. It is unnecessary to examine in detail the origin, powers and purposes of these bodies, except to emphasize that they were engaged in the regulation and control of essential commodities and the fixing of maximum and minimum prices with regard thereto.

The appellant made its application to the Commodity Prices Stabilization Corporation Ltd. This corporation was incorporated "with the intent and for the purpose of facilitating, under the direction of the Wartime Prices and Trade Board, the control of prices of goods, wares and merchandise in Canada, and with such powers, in addition to those conferred by the Companies Act, as may be set forth in the Letters' Patent" (Order-in-Council P.C. 9870, December 17, 1941). Letters Patent were issued on the 24th day of December, 1941, and expressly provided for the payment of such subsidies "as the company may deem fit and proper." The foregoing Order-in-Council P.C. 9870 was subsequently amended on July 7, 1942, by Order-in-Council P.C. 5863, to provide that the company should pay only

such sum or sums by way of * * * subsidy, * * * as may be deemed advisable; * * *

subject, however, to a further provision

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.

The corporation, under date of July 14, 1942, refused the appellant's application for a subsidy on the basis that gasoline was available in Canada and, therefore, the provisions of para. 4(c) of the "Statement on Import Policy", dated January 1, 1942, prohibited the payment of a subsidy. 4. Importers should observe the following points. in connection with goods eligible for subsidy:

* * *

(c) * * * No subsidies will be paid if similar goods are available in Canada at reasonable prices.

In its letter refusing payment of a subsidy the corporation pointed out that the oil controller's order 010 (October 21, 1941) established maximum prices as of October 1, 1941, for gasoline which at Toronto, for the grade (Grade 2) here in question, was 32.5c per gallon, and that gasoline was available in Toronto which, when sold at 32.5c per gallon, would give to the retailer a spread of 4c to 5.5c per gallon, depending upon whether it was purchased on the basis of tank wagon or tank car. It was also pointed out that quantity buyers might obtain jobber's prices which would

provide an even greater spread. In fact, throughout the negotiations that followed, the corporation took the position that it was open to the appellant to increase its retail price of 27 • 8c to the ceiling of 32 • 5c and to purchase gasoline on the same basis as other distributors, while the appellant maintained it was not permitted to increase its price above 27.8c per gallon. It was at this price that it was selling gasoline on October 1, 1941, the effective date of the price under oil controller's order 010, and also the price at which it was selling gasoline in the basic period September 15 to October 11 as fixed by Order-in-Council P.C. 8527 dated November 1, 1941, which provided:

The maximum price at which any person may sell or supply any goods or services shall be the highest lawful price at which such person sold or supplied goods or services of the same kind and quality during

the period September 15, 1941, to October 11, 1941. The appellant contends that its price of 27.8c per gallon was fixed, whether the matter be dealt with under the oil controller's order 010 or under Order-in-Council P.C. 8527. It is conceded that, if the latter applies, the price was so fixed. It is, however, contended that it does not apply because in para. 4(g) of the latter (Order-in-Council P.C. 8527) it is provided:

4. The provisions of section 3 (price fixing) 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. It is established that oil controller's order 010 was issued prior thereto with the concurrence of the board. The question, therefore, arises particularly under oil controller's order 010. Item No. 9 of this order reads, in part, as follows:

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

(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, * * *

and Item No. 10 thereof, in part, as follows:

10. Any person who sells petroleum products, or any of them, at a price greater than is authorized by this Order as applicable at the place of delivery thereof shall be guilty of a breach of this Order * * *

The corporation's contention is that under oil controller's order 010 prices were "set for gasoline on a geographical basis and not on an individual basis," and, therefore, the word "place" in the foregoing Item No. 9(a) should be construed to refer and be applicable to all service stations in Toronto and not to the individual service stations. This construction, if accepted, permitted the appellant to raise its price to 32.5c per gallon at its service stations in Toronto.

The word "place" is not defined in order 010, nor is it defined in any other of the oil controller's orders. Not only does the oil controller not define the word "place," but he never did fix any "place, area or zone" within which a particular price would obtain. The oil controller was a member of the Wartime Industries Control Board, which was created, inter alia, in order that the controllers "should act in respect to common problems along similar lines" (Order-in-Council P.C. 2715, June 24, 1940); and then by a further Order-in-Council (P.C. 6835, August 29, 1941) another step was taken to

further measures to promote co-ordination and integration of the functions and activities of such Controllers, * * * by creating a closer relationship between the Controllers, the Wartime Industries Control Board and the Wartime Prices and Trade Board, to promote co-operation * * * and reduce the possibility of any confusion arising as a result of the exercise and discharge of their various powers, functions and duties.

P.C. 6835 was one of the Orders-in-Council under which the oil controller issued his order 010. In these circumstances it is significant that The Maximum Prices Regulations, as fixed by Order-in-Council P.C. 8527, November 1, 1941, provided in sec. 3, subsection (7):

3. (7) For the purposes of these regulations, each separate place of business of a seller or supplier shall be deemed to be a separate seller or supplier.

The first of the three above-mentioned statements included:

The price ceiling applies to each individual store, department or branch on the basis of its own prices for each separate kind and quality of goods and services during the basic period. The lower-price stores are not permitted to raise their prices to the level of the higher-price stores.

It is also significant that the corporation, in refusing the appellant's request for the allotment of a larger quota, stated:

If any station operated by your Company is permitted to sell more gasoline than the quota applicable to such station, the result is clearly a breach of the order.

Moreover, provision 8(1) of Order-in-Council P.C. 6835, under which the oil controller issued his order 010, repealed the oil controller's original authority in this regard, as contained in Order-in-Council P.C. 1195. In the latter in particular the word "place" appears several times and sometimes clearly means an individual place of business. Indeed, in reading the order as a whole, it is quite open to the construction that the word "place" throughout has that meaning. It will be further observed that in issuing order 010 the oil controller used the word "place" only and not the phrase "place, area or zone," as those words appear in para. 8(1) of Order-in-Council P.C.

6835.

This order 010 was issued October 21, 1941, before any of the three statements above referred to. On January 28, 1942, after these statements were issued, as well as Order-in-Council P.C. 8527, all making it clear that prices generally were fixed in relation to the individual store or place of business, the oil controller amended his order 010 by his further order 010A, and even then did not define the word "place" to mean, in effect, an area or zone as he now contends. It would seem that if he intended the word "place", in his order, to have a meaning different from that which obtained otherwise throughout price control that he would at least have made it clear in order 010A. Throughout it is obvious that it was the intent and purpose of the Governor in Council that the provisions respecting price fixing should be read and construed together and that all bodies engaged in administering price control should act together and in concert. It follows that the word "place" ought to be construed as having the same meaning throughout, unless in a particular order it is used in a context which shows some other meaning was intended. Such is not found in Orders-in-Council P.C. 1195 and P.C. 6835, nor is it found in oil controller's order 010, and, therefore, the word "place," as used therein, should be construed to mean the individual service station. The appellant, therefore, could not raise its retail prices to 32.5c per gallon and gasoline was not "available in Canada at reasonable prices" within the meaning of para. 4(c) above quoted.

The respondents contended that as the corporation was authorized to pay such subsidy "as the company may deem fit and proper" and then only "with the approval of the Minister of Finance," its decision was the exercise of an "administrative discretion" over which there was no control other than that it "shall be in accordance with principles formulated from time to time by the Wartime Prices and Trade Board and approved by the Minister." The difficulty in applying the authorities cited by the respondents in support of the view that the exercise of such a discretion is not reviewable by a court is that here the company, upon the evidence, did not exercise a discretion, but rather acted upon its construction of the above para. 4(c). The construction of such a provision is a matter of law and not the exercise of a discretion.

Oil controller's order 010 does not deal with importation of gasoline. That was otherwise dealt with. In addition to para. 9, already quoted, of the statement of December 2, 1941, it contained this specific reference:

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

Indeed, throughout it is not contested but that it was intended those carrying on business would continue to do so and that if it were necessary for them to import merchandise and to pay higher prices therefor an application for a subsidy would be considered. Gasoline was not available to the appellant in Canada at a reasonable price that would permit of its carrying on business and selling its gasoline at the price fixed by the oil controller at 27.8c per gallon.

The appellant's application was only considered upon the basis that gasoline was available to it in Canada at reasonable prices. Under these circumstances it would appear that the appellant is entitled to have its application further considered. The matter should be referred back on the basis suggested by my brother Locke and adopted by the Chief Justice and the costs disposed of as my brother Rand suggests.

The appeal is allowed and the matter referred back to the Commodity Prices Stabilization Corporation to deal with the claims for subsidies advanced in this action on the footing that the orders of the oil controller permitted the appellants to increase their prices only to the extent of one cent per gallon on Sept. 30, 1941. In view of the fact that this declaratory relief was not asked for and the claims as submitted must be rejected, the appellants will recover one third of their costs in both Courts.

Solicitor for the Appellants: E. A. R. Newson.

Solicitors for the Respondent: Magee, O'Donnell and Byers.

1 Ex. C.R. [1949] 136.

2 [1940] A.C. 127.

3 [1949] Ex. C.R. 136.

4 (1880) 5 A.C. 214 at 222.

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