2009 IFA TRAVELLING LECTURESHIP ON ROYALTIES BY NATHAN BOIDMAN
APPENDICES TO LECTURE OUTLINE

APPENDIX 1 (RE COMMERCIAL LAW DEFINITIONS OF ROYALTIES)

Material:

Mobile Oil Canada, Inc. v. Her Majesty the Queen, 2001 DTC 5668

Daphne A. Dukelow and Betsy Nurse, "The Dictionary of Canadian Law", *Thomson Professional Publishing Canada*, 1991, p. 943*

Bryan A. Garner, Editor in Chief, "Black's Law Dictionary", *Thomson West*, 1999, p. 1356**

"Words & Phrases", *Thomson* Carswell, June 2008, Volume 7, R-S, p. 7-120*

"Words & Phrases", *Carswell*, 1993, Volume 7, R-S, p. 7-539*

Mobil Oil Canada Limited v. The Queen (Appellant) v. Her Majesty the Queen (Respondent)

Federal Court of Appeal, November 5, 2001. (Court File Nos. A-694-99, A-695-99, A-696-99 and A-697-99.)

Deductions — Royalties — Corporate taxpayer's business operations including the exploration for, and production of, petroleum and natural gas — Taxpayer remitting substantial sums to the Province of Saskatchewan in satisfaction of its obligations under the Road Allowances Crown Oil Act — Whether FCTD correct in finding (99 DTC 5709) that paragraph 18(1)(m) of the Income Tax Act prohibiting the deduction of such sums in the computation of taxpayer's income for 1977, to 1980 — Income Tax Act, R.S.C. 1985 (5th Supp.), c. 1, as amended, ss. 12(1)(o)(iv), 18(1)(m), 20(1)(v.1) and 66(15) — Road Allowances Crown Oil Act, R.S.S. 1978, c. R-23, ss. 2(d), 3, 4(1), 4(2), 5(1), 5(2), 5(3), 6, 7, 8, 9 and 10.

The corporate taxpayer, Mobil's business operations included the exploration for, and production of, petroleum and natural gas. During 1977 to 1980 Mobil produced oil from properties in Saskatchewan that were subject to Crown leases which gave it the right to take or remove oil. Mobil remitted substantial sums ("the Remitted Funds") to the Province of Saskatchewan in satisfaction of its obligations under section 4 of the Road Allowances Crown Oil Act. (The Road Allowances Crown Oil Act permitted the Province to collect revenue equal to 1% of the value of all oil produced in the Province. While it was in force, moreover, the Province was the owner of 1.88% of all oil produced in Saskatchewan.) In its amended returns for 1977 and 1978 Mobil included the Remitted Funds in its income, but subsequently claimed that it had made an error in so doing. Hence in its amended returns for 1979 and 1980, it deducted the Remitted Funds from its income, which the Minister disallowed. The Minister also took the position that the Remitted Sums had been properly included in Mobil's income for 1977 and 1978. In dismissing Mobil's appeal from the Minister's reassessments for 1977 to 1980 (99 DTC 5709), the Federal Court–Trial Division determined that the Remitted Sums were royalties satisfying the royalty income inclusion criteria of paragraph 12(1)(o)(iv) and (v) of the Income Tax Act ("the Act"). Therefore, since paragraph 12(1)(o) mirrored the provisions of paragraph 18(1)(m) of the Act, the latter, in the Trial Judge's view, prohibited the deduction of the Remitted Sums in the computation of Mobil's income for 1977 to 1980. Mobil appealed to the Federal Court of Appeal.

Held: **Mobil's appeal was dismissed. During the course of argument it became clear that all of Mobil's proceeds of sale of its oil production, including the Province's share, had been correctly included in its income under section 9 of the Act, and that paragraph 12(1)(o) of the Act had no application. The question remained, however, as to whether the deduction of the Remitted Sums was prohibited by paragraph 18(1)(m). (Clause 18(1)(m)(v)(A) of the Act, as it then read, prohibited the deduction of any amount payable by virtue of an obligation imposed by statute as a "royalty . . . or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount, and that may reasonably be regarded as being in relation to . . . the production in Canada of petroleum, natural gas or related hydrocarbons, or . . . ".) Accordingly, Mobil's appeal had to fail if two conditions were met: (1) the Remitted Payments were "a royalty . . ."; and (2) they were within the scope of subparagraphs 18(1)(m)(iv) or (v) of the Act. While the Act did not define the word "royalty", that word is still used in Canada to describe a payment that is required by a provincial statute to be paid to the province as a share of the production of a resource. Under the Road Allowances Crown Oil Act, Mobil had the right to sell its entire oil production for the years under appeal, including the Province's 1.88% share, upon paying the Province an amount equal to 1% of the total value of the production. That 1% payment was a royalty, even though it was the *Road Allowances Crown Oil Act itself* that created the Province's 1.88% proprietary interest. The Remitted Sums, therefore, were "royalties" within the meaning of paragraph 18(1)(m) of the Act. That said, the only remaining issue was whether the Remitted Sums fell within the scope of subparagraph 18(1)(m)(v). Mobil had the right under its leases to take or remove the oil, and the Remitted Sums reasonably related to such right. Hence, they fell within the scope of subparagraph 18(1)(m)(v). The Trial**

Judge, therefore, was correct in concluding that such Sums were not deductible. The Minister's reassessments were affirmed.

Counsel: Not available.

Before: Sharlow, Linden and Malone, JJ.A.

SHARLOW, J.A. (Linden and Malone, JJ.A. concurring: [1] The issue in these appeals is whether the payments Mobil Oil Canada Ltd. made to the Province of Saskatchewan in 1977, 1978, 1979 and 1980 pursuant to section 4 of the *Road Allowances Crown Oil Act*, R.S.S. 1978, c. R-23, are deductible in computing its income for those years under the *Income Tax Act*, S.C. 1970-71-72, c. 63. Mr. Justice Nadon held that they are not deductible: *Mobil Oil Canada Ltd. v. Canada (1999)*, 176 F.T.R. 98, [2000] 1 C.T.C. 10, 99 DTC 5709, [1999] F.C.J. No. 1501 (F.C.T.D.). The appellant now appeals to this Court.

Road Allowance Crown Oil Act

[2] The *Road Allowances Crown Oil Act* came into force on April 1, 1959 (S.S. 1959, c. 53) and was repealed on June 21, 2000 (S.S. 2000, c. 16). It was amended in 1979 but the amendment did not make any changes that are relevant to this appeal. The main provisions (after the 1979 amendment) read as follows:

3. In every producing oil reservoir one and eighty-eight one-hundredths per cent of the recoverable oil shall be deemed to be within, upon or under road allowances and shall be the property of the Crown.

4. (1) Except as provided in section 5, every owner producing oil shall be liable to pay and shall on or before the last day of each month pay to the minister one per cent of the value, calculated on the average prevailing well-head price, of the oil produced, free and clear of any deductions, during the preceding month.

(2) For the purposes of subsection (1), "average prevailing well-head price" means the price of a cubic metre of the oil produced from a well, calculated by taking the total sale price of all cubic metres of oil from the well sold during the month in respect of which the average prevailing well-head price is to be calculated, and deducting therefrom the cost of transporting the oil from the well or battery to the point of sale, and dividing the difference so obtained by the number of cubic metres of oil sold at the point during the said month.

5. (1) Instead of payment as required by section 4, the minister may elect to receive payment in kind for all or any portion, as designated by him, of one per cent of the oil produced during the month in respect of which payment is to be made, by taking delivery of such oil or designated portion thereof; and where the minister so elects, the owner shall deliver such oil or such designated portion thereof at the time and place and in the manner specified by the minister.

(2) Where under subsection (1) the minister requires oil to be delivered at a place other than the place of production of the oil and is satisfied that the proceeds of the sale by the owner of eighty-eight one-hundredth of one per cent of the oil produced during the month in respect of which payment is to be made are not sufficient to cover the cost of production during that month of the oil declared by section 3 to be the property of the Crown and the cost of delivery as required by the minister, the minister may authorize the owner to make such deduction from the quantity of oil to be delivered as the minister deems just and reasonable.

(3) Where under subsection (1) the minister elects to take delivery of a portion only of one per cent of the oil produced during the month in respect of which payment is to be made, section 4 shall apply *mutatis mutandis* with respect to payment for the balance of the said one per cent of the oil of which the minister does not require delivery.

6. Subject to compliance with section 4 or 5, every owner producing oil may retain and dispose of oil declared by section 3 to be the property of the Crown to the extent of eighty-eight one-hundredths of one per cent of the oil produced, or the proceeds of the sale thereof, for his own use and benefit.

7. Every owner producing oil shall on or before the fifteenth day of each month submit to the minister, upon a form approved by him, a statement showing the oil produced during the preceding month.

8. The sale, purchase, acquisition, transportation, processing or handling of oil in violation of this Act is prohibited.

9. Every person who contravenes any provision of this Act is guilty of an offence and liable on summary conviction to a fine of not less than $10 nor more than $10,000; but neither a prosecution nor the enforcement of a penalty under this Act shall suspend or affect any remedy for the recovery of any amount payable, or oil in lieu thereof, under this Act.

10. Notwithstanding any prosecution under this Act, the minister may commence and maintain an action to enjoin the violating of any provision under this Act.

[3] The *Road Allowances Crown Oil Act* permitted the Province to collect revenue equal to 1% of the value of all oil produced in the Province. While it was in force, the Province of Saskatchewan was the owner of 1.88% of all oil produced in Saskatchewan: *Imperial Oil Ltd. v. Placid Oil Co*, [1963] S.C.R. 333, (1963) 39 D.L.R. (2d) 244, (1963) 43 W.W.R. 437.

[4] The Province did not automatically take delivery of its share of the oil production, but simply reserved the right to elect under section 5 to do so. A producer of oil for which no election was made had the right to sell the Province's

1.88% share and retain the proceeds of sale in excess of 1% of the value of the oil produced. As long as no election was made, all costs of production were borne by the producer, including the costs relating to the Province's share.

Facts

[5] In each of the years 1977 to 1980, Mobil produced oil from properties in Saskatchewan that were subject to leases pursuant to which the appellant had the right to take or remove oil. Substantially all of Mobil's oil production in Saskatchewan was from properties subject to Crown leases. The record does not disclose whether all or part of Mobil's Saskatchewan oil production for the years 1977 to 1980 was governed by leases that predated the 1959 enactment of the *Road Allowances Crown Oil Act*.

[6] The record contains a typical Crown lease as in effect during the years under appeal. It is dated October 26, 1977. Clauses 2 and 3 of the typical Crown lease read as follows:

> 2. The Lessee shall, at the times and in the manner prescribed in the Petroleum and Natural Gas Regulations, in effect from time to time, make or cause to be made to the Minister at Regina, Saskatchewan, all payments and returns required by the said Regulations as the same may be amended, revised or substituted from time to time.
>
> 3. The Lessee shall pay all rates, taxes and assessments whatsoever that may be charged or payable during the term hereof in respect of the leased lands or the operations hereunder.

[7] The Petroleum and Natural Gas Regulations, 1969, Sask. Reg. 8/69, contain stipulations for the payment of various amounts, including an annual rent and a royalty on the oil produced from the leased property. Regulation 71 reads as follows:

> 71. The grantee shall at all times fulfil, perform, observe and comply with The *Mineral Resources Act* and *The Oil and Gas Conservation Act* and the regulations under the Acts, and every other statute or regulation that is or may, by future enactment or amendment in any manner whatsoever, be applicable to his operation, plant, works, business or undertaking.

Clause 13 of the lease gave the Minister the right to cancel the lease in the case of any default or non-performance on the part of Mobil of any obligation or condition in the lease.

[8] During the years under appeal, Mobil's rights under its various oil leases brought Mobil within the definition of "owner" as defined in subsection 2(*d*) of the *Road Allowances Crown Oil Act*, which reads as follows:

> 2. In this Act:
>
> (*d*) "owner" means a person who has a right to drill into an underground reservoir and produce therefrom oil or gas or oil and gas and to appropriate the oil or gas he produces either to himself or others or to himself and others [. . .].

[9] The Province did not elect to take delivery of its share of Mobil's oil production. Therefore Mobil, having made the required payments under section 4 of the *Road Allowances Crown Oil Act*, was entitled to sell the Province's 1.88% share of the oil it produced during those years and retain the revenue.

Question to be determined on appeal

[10] It is not disputed that all of the proceeds of sale of Mobil's oil production for the years 1977 to 1980, including the Province's 1.88% share, was correctly included in Mobil's income for those years. There is, however, a dispute as to the deductibility of Mobil's payments to the Province pursuant to section 4 of the *Road Allowances Crown Oil Act*. The payments were $551,034 (1977), $646,254 (1978), $731,526 (1979), and $822,178 (1980). The Crown's position is that paragraph 18(1)(*m*) of the *Income Tax Act* prohibits the deduction.

[11] Paragraph 18(1)(*m*) was first enacted in 1974. Before its enactment, provincial resource taxes and royalties were fully deductible in computing income under the *Income Tax Act*. Increases in the value of oil and gas in 1973 and 1974 prompted some provinces to increase provincial levies on the production of those resources. The federal government, being concerned about the erosion of the federal tax base from those increases, wished to limit the relief available under the *Income Tax Act* for provincial resource taxes and royalties. The then Minister of Finance, in his budget speech of May 6, 1974, said this:

> . . . I am proposing that revenues derived by provincial governments in respect of production from a petroleum or mineral resources should no longer be deductible in computing the income of the operator of the resource.

[12] This was accomplished by a number of amendments to the *Income Tax Act*, some of which are described as follows in J.V. Krukowski, *Canadian Taxation of Oil and Gas Income*, 2nd ed. (Don Mills, Ont: CCH Canadian Limited, 1987) at page 162:

> The federal government achieved disallowance of deductions for provincial oil and gas levies through four sets of provisions. The first provision requires a taxpayer to include in income the value of any production that vests in the Crown (paragraph 12(1)(*o*)). The second provision disallows most amounts paid to the Crown on account of oil, gas or mineral production or to maintain

an oil, gas or mineral lease (paragraph 18(1)(*m*)). The third provision, or rather group of provisions, sets aside any income tax advantage that a taxpayer would obtain through dealing with the Crown at prices lower than fair market value (subsection 69(6) to (10)). The fourth provision allows companies to shift the burden of disallowance by ignoring the reimbursement of non-deductible levies when computing taxable income (section 80.2).

These limitations on federal income tax relief were offset in part by a statutory deduction called the resource allowance (paragraph 20(1)(*v*.1)).

[13] As a preliminary point, I note that Mobil indicated in its written argument in this appeal, and in its argument before the Trial Judge, that there is an issue as to whether paragraph 12(1)(*o*) of the *Income Tax Act* required the payments to be included in Mobil's income. In the course of argument it became clear that all of the proceeds of sale of the oil production, including the Province's share, are correctly included in Mobil's income pursuant to section 9 of the *Income Tax Act* and paragraph 12(1)(*o*) can have no application to this case.

[14] I turn now to the question of whether the deduction of the payments is prohibited by paragraph 18(1)(*m*). For the years under appeal, paragraph 18(1)(*m*) of the *Income Tax Act* read as follows:

18. (1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of	18. (1) Dans le calcul du revenu du contribuable tiré d'une entreprise ou d'un bien, les éléments suivants ne sont pas déductible:
[. . .]	[. . .]
(*m*) any amount (other than a prescribed amount) paid or that became payable in the year by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute to	(*m*) toute somme (autre qu'une somme prescrite) payée ou devenue payable au cours de l'année en vertu d'une obligation imposée par une loi ou d'une obligation contractuelle qui remplace une obligation imposée par une loi
(i) Her Majesty in right of Canada or a province,	(i) à Sa Majesté du chef du Canada ou d'une province,
(ii) an agent of Her Majesty in right of Canada or a province, or	(ii) à un mandataire de Sa Majesté du chef du Canada ou d'une province, ou
(iii) a corporation, commission or association that is controlled, directly or indirectly in any manner whatever, by Her Majesty in right of Canada or a province	(iii) à une corporation, commission ou association contrôlée directement ou indirectement, de quelque façon que ce soit, par Sa Majesté du chef du Canada ou d'une province ou par un mandataire de Sa Majesté du chef du Canada ou d'une province
as a royalty, tax (other than a tax or portion thereof that may reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount, and that may reasonably be regarded as being in relation to	à titre de redevance, de taxe (autre qu'une taxe ou fraction de taxe qui peut raisonnablement être considérée comme une taxe municipale ou scolaire), de loyer, de prime, ou à titre de somme, quelle que soit la façon dont elle est désignée, qui peut être raisonnablement considérée comme tenant lieu d'une telle somme, qui peut raisonnablement être considérée comme rattachée
(iv) the acquisition, development or ownership of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired after 1971, or	(iv) à l'acquisition, à l'aménagement ou à la propriété d'un avoir minier canadien ou d'un bien qui l'aurait été s'il avait été acquis après 1971, ou
(v) the production in Canada of	(v) à la production au Canada,
(A) petroleum, natural gas or related hydrocarbons, or	(A) de pétrole, de gaz naturel ou d'hydrocarbures apparentés, ou
(B) metal or minerals to any stage that is not beyond the prime metal state or its equivalent	(B) de métaux ou deminerai, jusqu'à un stade ne dépassant pas celui de métal primaire ou de son équivalent,

from an oil or gas well or mineral resource situated on property in Canada from which the taxpayer had, at the time of such production, a right to take or remove petroleum, natural gas or related hydrocarbons or a right to take or remove metal or minerals; [. . .].	tirés d'une puits de pétrole ou de gaz ou de ressources minérales situées au Canada sur un bien sur lequel le contribuable avait, à la date de cette production, le droit d'extraire du pétrole, du gaz naturel ou d'autres hydrocarbures apparentés ou le droit d'extraire de métaux ou du minerai; [. . .]

[15] This appeal must fail if two conditions are met:

(1) the payments are "a royalty, tax (other than a tax or portion thereof that may reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount", and

(2) the payments are within the scope of subparagraphs 18(1)(*m*)(iv) or (v).

First condition: What is the nature of the payment?

[16] With respect to the first condition, the Crown concedes that the payments are not lease rentals or bonuses and cannot reasonably be considered to be school or municipal taxes. The Crown argues that they are either royalties, taxes or amounts that may reasonably be regarded as in lieu of royalties or taxes. The Trial Judge held that the payments are either royalties or amounts that may reasonably be regarded as in lieu of royalties. In light of this finding, he did not consider whether the payments are taxes.

[17] The *Income Tax Act* does not define "royalty", and there is no jurisprudence that offers a comprehensive definition. Mobil relies on the following definition, which appears in *Black's Law Dictionary*, 5th ed. (St. Paul, Minn: West Publishing Co., 1979) at page 1195:

> Compensation for the use of property, usually copyrighted material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. In its broadest aspect, it is share of profit reserved by owner for permitting another the use of property. [. . .]
>
> In mining and oil operations, a share of the product or profit paid to the owner of the property. [. . .]

[18] It is common ground that this definition is appropriate to describe the Canadian usage of the word "royalty" in the commercial context. Certainly it is consistent with the usage of the word "royalty" in the Canadian oil and gas industry. Typically, in contractual arrangements between landowners and oil and gas producers, the owner grants the producer the right to drill for, produce and take the resource, reserving a "royalty interest" which entitles the owner to a portion of the oil or gas produced, payable in kind or in money or both (J.B. Katchen and R.W. Bowhay, *Taxation of Canadian Oil and Gas Income*, Don Mills, Ont.: De Boo Publishers, 1986, at pages 1-12 to 1-13). In that context, a "royalty" is the means by which the owner of the resource shares in its production (J.B. Ballem, *The Oil and Gas Lease in Canada*, 2nd ed., Toronto: University of Toronto Press, 1985, at page 127).

[19] It is argued for Mobil that the payments in issue in this case are not royalties within the meaning encapsulated by the authorities referred to above. I summarize Mobil's argument as follows. The word "royalty" means a payment made for the right or privilege to explore for, bring into production, take or dispose of oil or gas. The payments are not "royalties" within that meaning, because Mobil's right to take the oil from the various properties in Saskatchewan were derived from leases that operate independently of the *Road Allowances Crown Oil Act*. Those leases, and only those leases, stipulate the consideration that Mobil must pay to the Province, as the owner of the oil, for the right to take the oil. What Mobil had to pay the Province under the *Road Allowances Crown Oil Act* was paid for something other than the right to take the oil from the property. It would follow, according to Mobil's argument, that payments made to the Province under the *Road Allowances Crown Oil Act* are not royalties.

[20] In my view, Mobil's proposed definition incorrectly assumes that the word "royalty" as used in paragraph 18(1)(*m*) is limited to its meaning in the commercial context. It must be borne in mind that paragraph 18(1)(*m*) deals fundamentally with payments to the Crown. It is therefore appropriate to recall that the word "royalty" in its original sense refers to Crown prerogatives or Crown rights. That meaning of "royalty" was applied in *Attorney-General of Ontario v. Mercer* (1883), 8 App. Cas. 767 (P.C.) to the

interpretation of section 109 of what is now the *Constitution Act, 1867*, which reads as follows:

All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.	Toutes les terres, mines, minéraux et réserves royales appartenant aux différentes provinces du Canada, de la Nouvelle-Écosse et du Nouveau-Brunswick lors de l'union, et toutes les sommes d'argent alors dues ou payables pour ces terres, mines, minéraux et réserves royales, appartiendront aux différentes provinces d'Ontario, Québec, la Nouvelle-Écosse et le Nouveau-Brunswick, dans lesquelles ils sont sis et situés, ou exigibles, restant toujours soumis aux charges dont ils sont grevés, ainsi qu'à tous intérêts autres que ceux que peut y avoir la province.

[21] The word "royalty" is still used in Canada to describe a payment that is required by a provincial statute to be paid to the province as a share of the production of a resource. Typically, in the case of a resource that the province owns, there is a provincial statute that authorizes the granting of a lease subject to the payment of royalties. The Saskatchewan *Mineral Resources Act*, R.S.S. 1978, c. M-16 is an example of such a statute. However, there is no authority that suggests that the word "royalty" must be limited to amounts paid pursuant to such an arrangement. In the context of payments to a province, the word "royalty" may describe any share of resource production that is paid to the province in connection with its interest in the resource.

[22] Under the *Road Allowances Crown Oil Act*, Mobil had the right to sell its entire oil production for the years under appeal, including the Province's 1.88% share, upon paying the Province an amount equal to 1% of the total value of the production. In my view, that 1% payment is a royalty even though it was the *Road Allowance Crown Oil Act* itself that created the Province's 1.88% proprietary interest. I conclude, therefore, that the payments in question are "royalties" within the meaning of paragraph 18(1)(*m*) of the *Income Tax Act*.

Second condition: To what do the payments relate?

[23] With respect to the second condition, it is necessary to consider only subparagraph 18(1)(*m*)(v). In support of its position that the payments are not within the scope of subparagraph 18(1)(*m*)(v), Mobil argues that the payments represent the Province's net share of its 1.88% ownership in the oil produced, and that Mobil had no rights in respect of the Crown's 1.88% share.

[24] I do not read subparagraph 18(1)(*m*)(v) as imposing any condition as to the ownership of the oil with respect to which the payments were made. In my view only two questions need be asked. The first question is whether Mobil had the right to take or remove the oil from the property. The answer to that question must be yes. Mobil owned the leases that were the legal source of its right to take or remove the oil. The fact that the production of the oil triggered certain obligations under the *Road Allowances Crown Oil Act* did not derogate from Mobil's right under the leases to take or remove the oil. The second question is whether the payments may reasonably be considered to relate to the exercise of Mobil's right to remove the oil from the ground. The answer to that question must also be yes. Section 4 of the *Road Allowances Crown Oil Act* expressly ties the exercise of that right to the obligation to make the payments. It follows that the payments are within the scope of subparagraph 18(1)(*m*)(v).

Conclusion

[25] The Trial Judge correctly concluded that in computing Mobil's income for 1977, 1978, 1979 and 1980 under the *Income Tax Act*, paragraph 18(1)(*m*) prohibits the deduction of the payments made to the Province of Saskatchewan pursuant to section 4 of the *Road Allowances Crown Oil Act*. These appeals should be dismissed with costs.

THE DICTIONARY OF CANADIAN LAW

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prerogative, hereditary revenues, personal interest or property. A. Fraser, G.A. Birch & W.A. Dawson, eds., *Beauchesne's Rules and Forms of the House of Commons of Canada*, 5th ed. (Toronto: Carswell, 1978) at 238.

ROYAL HIGHNESS. A title authorized by British letters patent to apply to the children of any sovereign, the children of the sovereign's sons, and the eldest living son of the eldest son of any Prince of Wales. The Duke of Edinburgh may also be called Royal Highness.

ROYAL INSTRUMENT. An instrument, in respect of Canada, that, under the present practice, is issued by and in the name of the Queen and passed under the Great Seal of the Realm or under one of the signets. *Seals Act*, R.S.C. 1985, c. S-6, s. 2.

ROYAL PREROGATIVE. Power and privilege which the common law accords to the Crown. P.W. Hogg, *Constitutional Law of Canada*, 2d ed. (Toronto: Carswell, 1985) at 10.

ROYAL RECOMMENDATION. A communication, attached to a financial initiative of the Crown, which lays down once and for all (unless withdrawn and replaced) the amount of a charge as well as its conditions, objects, purposes and qualifications. A. Fraser, G.A. Birch & W.A. Dawson, eds., *Beauchesne's Rules and Forms of the House of Commons of Canada*, 5th ed. (Toronto: Carswell, 1978) at 181 and 182.

ROYAL SEALS. Include the Great Seal of Canada and any other seals or signets that may, with the approval of Her Majesty the Queen, be authorized under this Act. *Seals Act*, R.S.C. 1985, c. S-6, s. 2.

ROYAL STYLE AND TITLES. ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith. *Royal Style and Titles Act*, R.S.C. 1985, c. R-12, s. 2.

ROYALTIES. *n.* Includes (a) licence fees and all other payments analogous to royalties, whether or not payable under any contract, that are calculated as a percentage of the cost or sale price of defence supplies or as a fixed amount per article produced or that are based on the quantity or number of articles produced or sold or on the volume of business done; and (b) claims for damages for the infringement or use of any patent or registered industrial design. *Defence Production Act*, R.S.C. 1985, c. D-1, s. 2. See ROYALTY.

ROYALTY. *n.* 1. A financial consideration paid for the right to use a copyright or patent or to exercise a similar incorporeal right; payment made from the production from a property which the grantor still owns. H.G. Fox, *The Canadian Law of Trade Marks and Unfair Competition*, 3d ed. (Toronto: Carswell, 1972) at 696. 2. The amount payable to the Crown for timber harvested on Crown Lands as prescribed by regulation. *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1, s. 1. See CROWN ~; GROSS ~ TRUST; OIL AND GAS ~ TRUST; PRODUCTION ~; RESOURCE ~; ROYALTIES.

ROYALTY DEDUCTION ACCOUNT. With respect to a corporation at the end of a taxation year means (i) with respect to the 1979 taxation year, the aggregate of (A) the amount of attributed Canadian royalty income used by the corporation in the calculation of its royalty tax rebate for each of the taxation years prior to the 1979 taxation year; and (B) the attributed Canadian royalty income used by the corporation in the calculation of its royalty tax rebate for the taxation year; and (ii) with respect to the 1980 and subsequent taxation years, the aggregate of (A) the corporation's royalty deduction account at the end of the immediately preceding taxation year; and (B) the attributed Canadian royalty income used by the corporation in the calculation of its royalty tax rebate for the taxation year. *Alberta Income Tax Act*, R.S.A. 1980, c. A-31, s. 14. 2. (i) The corporation's royalty deduction account at the end of the immediately preceding taxation year; and (ii) the corporation's royalty tax deduction for the taxation year. *Alberta Corporate Income Tax Amendment Act, 1981*, S.A. 1981, c. 8, s. 22.

ROYALTY INTEREST. Any interest in, or the right to receive a portion of, any oil or gas produced and saved from a field or pool or part of a field or pool or the proceeds from the sale thereof, but does not include a working interest or the interest of any person whose sole interest is as a purchaser of oil or gas from the pool or part thereof.

ROYALTY OWNER. 1. A person, including Her Majesty in right of Canada, who owns a royalty interest. 2. A person, other than a working interest owner, who has any interest in a right to receive a portion of the oil and gas produced from any lands or a portion of the proceeds from the sale thereof, including a reversionary interest, a royalty interest reserved to the lessors named in any subsisting oil and gas lease, and any over-riding royalty interest, or an interest in a payment under, or encumbrance on, a lease or other contract relating to oil and gas that does not carry with it the right to search for or produce the oil and gas. *Mines Act*, R.S.M. 1970, c. M160, s. 60.

ROYALTY YEAR. With respect to an interest, a calendar year or any 12 consecutive months

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"The word 'rout' comes from the same source as the word 'route.' It signifies that three or more who have gathered together in unlawful assembly are 'on their way.' It is not necessary for guilt of this offense that the design be actually carried out, nor that the journey be made in a tumultuous manner." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 483 (3d ed. 1982).

routine-activities theory. The theory that criminal acts occur when (1) a person is motivated to commit the offense, (2) a vulnerable victim is available, and (3) there is insufficient protection to prevent the crime. Cf. CONTROL THEORY; RATIONAL-CHOICE THEORY; STRAIN THEORY.

Royal Marriages Act. A 1772 statute (12 Geo. 3, ch. 1) forbidding members of the royal family from marrying without the sovereign's permission, except on certain conditions.

"Royal Marriages Act .... An Act occasioned by George III's fear of the effect on the dignity and honour of the royal family of members thereof contracting unsuitable marriages, two of his brothers having done so .... It provided that marriages of descendants of George II, other than the issue of princesses who marry into foreign families, should not be valid unless they had the consent of the King in Council, or, if the parties were aged over 25, they had given 12 months' notice to the Privy Council, unless during that time both Houses of Parliament expressly declare disapproval of the proposed marriage." David M. Walker, *The Oxford Companion to Law* 1091 (1980).

royalty. 1. A payment made to an author or inventor for each copy of a work or article sold under a copyright or patent. [Cases: Copyrights and Intellectual Property ⇐48; Patents ⇐217.1. C.J.S. *Copyrights and Intellectual Property* §§ 27, 29, 33–34, 93; *Patents* § 364.]

established royalty. A royalty set at an agreed-on price. • In the absence of an established royalty, a court will determine a remedy for infringement based on what a reasonable royalty would have been.

reasonable royalty. A royalty that a licensee would be willing to pay the holder of the thing's intellectual-property rights while still making a reasonable profit from its use. • The reasonable-royalty standard often serves as the measure of damages in a claim of patent, copyright, or trademark infringement, or for misappropriation of trade secrets. In deciding what royalty is reasonable in a trade-secrets suit, courts consider the unique circumstances of the case, as well as (1) how the use affected the parties' ability to compete; (2) the cost of past licenses; (3) the cost to develop the secret and its present value; (4) how the defendant intends to use the information; and (5) the availability of alternatives. [Cases: Patents ⇐319(1). C.J.S. *Patents* §§ 565, 567–568.]

2. *Oil & gas.* A share of the product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee's right to mine or drill on the land. — Also termed (in sense 2) *override*. [Cases: Mines and Minerals ⇐70, 79. C.J.S. *Mines and Minerals* §§ 218, 223–224, 289–290, 296, 298–299, 303.]

haulage royalty. A royalty paid to a landowner for moving coal via a subterranean passageway under the landowner's land from a mine located on an adjacent property. • The payment is calculated at a certain amount per ton of coal.

landowner's royalty. A share of production or revenues provided for the lessor in the royalty clause of the oil-and-gas lease and paid at the well free of any costs of production. • Traditionally, except in California, the landowner's royalty has been 1/8 of gross production for oil and 1/8 of the proceeds received from the sale of gas. But today the size is often negotiated. — Also termed *leaseholder royalty*.

mineral royalty. A right to a share of income from mineral production. [Cases: Mines and Minerals ⇐70, 79. C.J.S. *Mines and Minerals* §§ 218, 223–224, 289–290, 296, 298–299, 303.]

nonparticipating royalty. A share of production — or of the revenue from production free its costs — carved out of the mineral interest. • A nonparticipating-royalty holder is entitled to the stated share of production or cash without regard to the terms of any lease. Nonparticipating royalties are often retained by mineral-interest owners who sell their rights.

overriding royalty. A share of either production or revenue from production (free of the costs of production) carved out of a lessee's interest under an oil-and-gas lease. • Overriding-royalty interests are often used to compensate those who have helped structure a drilling venture. An overriding-royalty interest ends when the underlying lease terminates. [Cases: Mines and Minerals ⇐74. C.J.S. *Mines and Minerals* § 308.]

shut-in royalty. A payment made by an oil-and-gas lessee to the lessor to keep the lease in force when a well capable of producing is not utilized because there is no market for the oil or gas. • Generally, without such a payment, the lease will terminate at the end of the primary term unless actual production has begun. [Cases: Mines and Minerals ⇐78.1(3). C.J.S. *Mines and Minerals* §§ 269–270.]

royalty interest. *Oil & gas.* A share of production — or the value or proceeds of production, free of the costs of production — when and if there is production. • A royalty interest is usu. expressed as a fraction (such as 1/6). A royalty-interest owner has no right to operate the property and therefore no right to lease the property or to share in bonuses or delay rentals. In some states a royalty owner has the right of ingress and egress to take the royalty production. Authorities are split over what costs are costs of production. Several different but related kinds of royalty interests are commonly encountered. See ROYALTY (2).

rptr. *abbr.* REPORTER.

RRB. *abbr.* RAILROAD RETIREMENT BOARD.

R.S. See *revised statutes* under STATUTE.

RSPA. *abbr.* RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION.

RTC. *abbr.* RESOLUTION TRUST CORPORATION.

rubber check. See *bad check* under CHECK.

rubber-stamp seal. See NOTARY SEAL.

rubric (roo-brik). **1.** The title of a statute or code <the rubric of the relevant statute is the Civil Rights Act of 1964>. **2.** A category or designation <assignment

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ROYAL PREROGATIVE

Supreme Court of Canada

♦ Generally speaking, the royal prerogative means "the powers and privileges accorded by the common law to the Crown" (see P. W. Hogg, *Constitutional Law of Canada* (loose-leaf ed.), vol. 1, at p. 1:14). The royal prerogative is confined to executive governmental powers, whether federal or provincial. The extent of its authority can be abolished or limited by statute: "once a statute [has] occupied the ground formerly occupied by the prerogative, the Crown [has to] comply with the terms of the statute". (See P. W. Hogg and P. J. Monahan, *Liability of the Crown* (3rd ed. 2000), at p. 17; also, Hogg, *supra*, at pp. 1:15-1:16; P. Lordon, *Crown Law* (1991), at pp. 66-67.)

(Aboriginal law)

Ross River Dena Council Band v. Canada (2002), REJB 2002-32124, [2002] 2 S.C.R. 816, 275 W.A.C. 1, 168 B.C.A.C. 1, 289 N.R. 233, [2002] 9 W.W.R. 391, [2002] 3 C.N.L.R. 229, 3 B.C.L.R. (4th) 201, 213 D.L.R. (4th) 193, [2002] S.C.J. No. 54, 2002 D.T.C. 7093 (Fr.), 2002 D.T.C. 7079 (En.), 2002 CarswellYukon 59, 2002 CarswellYukon 58, 2002 SCC 54 (S.C.C.), at para. 54 LeBel J. (Arbour, Binnie, Gonthier, Iacobucci and Major JJ. concurring)

ROYALTIES

See ROYALTY.

ROYALTY

See also OVERRIDING ROYALTY.

Federal

♦ . . . the payments in issue in this case are not royalties within the meaning encapsulated by the authorities referred to above . . . The word "royalty" means a payment made for the right or privilege to explore for, bring into production, take or dispose of oil or gas. The payments are not "royalties" within that meaning, because [the appellant's] right to take the oil from the various properties in Saskatchewan were derived from leases that operate independently of the *Road Allowances Crown Oil Act*, [S.S. 1959, c. 53]. Those leases, and only those leases, stipulate the consideration that [the appellant] must pay to the Province, as the owner of the oil, for the right to take the oil. What [the appellant] had to pay the Province under the *Road Allowances Crown Oil Act* was paid for something other than the right to take the oil from the property . . . payments made to the province under the *Road Allowances Crown Oil Act* are not royalties.

. . . [the appellant's] proposed definition incorrectly assumes that the word "royalty" as used in paragraph 18(1)(m) [of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)] is limited to its meaning in the commercial context. It must be borne in mind that paragraph 18(1)(m) deals fundamentally with payments to the Crown. It is therefore appropriate to recall that the word "royalty" in its original sense refers to Crown prerogatives or Crown rights . . .

The word "royalty" is still used in Canada to describe a payment that is required by a provincial statute to be paid to the province as a share of the production of a resource. Typically, in the case of a resource that the province owns, there is a provincial statute that authorizes the granting of a lease subject to the payment of royalties . . . there is no authority that suggests that the word "royalty" must be limited to amounts paid pursuant to such an arrangement. In the context of payments to a province, the word "royalty" may describe any share of resource production that is paid to the province in connection with its interest in the resource.

(Tax)

Mobil Oil Canada Ltd. v. R. (2001), *(sub nom. Mobil Oil Canada Ltd. v. Minister of National Revenue)* 281 N.R. 367, [2002] 1 C.T.C. 55, 2001 CarswellNat 2456, 2001 FCA 333, 215 F.T.R. 32 (note), 2001 D.T.C. 5668 (Fed. C.A.), at para. 20, 21, 22 Sharlow J.A.

♦ I accept the defendant's submission that the essential feature of a royalty is a payment to the owner of a resource from the production of that resource.

(Tax)

Mobil Oil Canada Ltd. v. R. (1999), *(sub nom. Mobil Oil Canada Ltd. v. Minister of National Revenue)* 176 F.T.R. 98, 99 D.T.C. 5709, 1999 CarswellNat 1880, [1999] F.C.J. No. 1501, [2000] 1 C.T.C. 10 (Fed. T.D.), at para. 55 Nadon J.

Nova Scotia

♦ ... the use of the word "royalty" does not implicitly mean an interest in land or in the nature of rent.

(Natural resources)

Nova Scotia Business Capital Corp. v. Coxheath Gold Holdings Ltd. (1993), 1993 CarswellNS 260, 359 A.P.R. 118, 128 N.S.R. (2d) 118 (N.S. S.C.), at para. 29 Palmeter A.C.J.

♦ Royalties give to the Government of Venezuela ownership of a certain amount of the oil being taken from the ground. This can be delivered in kind or paid for in cash at the option of the Government and is the type of payment that does not come within the meaning of taxes, duties, charges or fees referred to in the agreement. Under our law the word "royalty" has a specific meaning and was not used by the contracting parties. It is difficult to believe that they would have intended to cover increased royalty payments without use of such a well-known descriptive word.

(Contracts; Natural resources)

Imperial Oil Ltd. v. Nova Scotia Light & Power Co. (1975), 62 D.L.R. (3d) 91 at 120 (N.S. T.D.) Hart J.

RULE AGAINST OATH-HELPING

Supreme Court of Canada

♦ ... the actual credibility of a particular witness is not generally the proper subject of opinion evidence ... This is known as the rule against oath-helping.

(Evidence)

R. v. D. (D.) (2000), [2000] 2 S.C.R. 275, 136 O.A.C. 201, REJB 2000-20289, 148 C.C.C. (3d) 41, 36 C.R. (5th) 261, 259 N.R. 156, 191 D.L.R. (4th) 60, [2000] S.C.J. No. 44, 2000 CarswellOnt 3256, 2000 CarswellOnt 3255, 2000 SCC 43 (S.C.C.), at para. 19 McLachlin C.J.C. (dissenting on the merits) (L'Heureux-Dubé and Gonthier JJ. concurring)

RULE IN HEYDON'S CASE

Alberta

♦ The Rule in *Heydon's Case* [(1584), 76 E.R. 637 (Eng. K.B.)] is alive and well now. What is that Rule? When interpreting legislation, the court must look to what was the mischief in the old law which the new legislation was aimed at. Then the court must see what solution the new legislation was intended to adopt.

(Civil practice and procedure)

Bowes v. Edmonton (City) (2007), 418 W.A.C. 123, 86 Alta. L.R. (4th) 47, [2008] 5 W.W.R. 70, 54 C.C.L.T. (3d) 189, [2007] A.J. No. 1500, 425 A.R. 123, 42 M.P.L.R. (4th) 192, 2007 ABCA 347, 2007 CarswellAlta 1851 (Alta. C.A.), at para. 143 Côté J.A. (dissenting)

RULE OF CAPTURE

Alberta

♦ The rule of capture permits landowners to drain away and capture substances from adjoining lands ... It is primarily a rule of non-liability and, in an ownership jurisdiction, a qualification of ownership.

(Real property)

Anderson v. Amoco Canada Oil & Gas (1998), 225 A.R. 277, 63 Alta. L.R. (3d) 1, [1998] A.J. No. 805, 1998 ABQB 620, 1998 CarswellAlta 669, [1999] 3 W.W.R. 255 (Alta. Q.B.), at para. 130 Fruman J.

RULE OF JURY SECRECY

Supreme Court of Canada

♦ The common law rule of jury secrecy, which prohibits the court from receiving evidence of jury deliberations for the purpose of impeaching a verdict ... reflects a desire to preserve the secrecy of the jury deliberation process and to shield the jury from outside influences.

.....

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wealth Affairs, [1981] 4 C.N.L.R. 86 at 91, [1982] Q.B. 892, [1982] 2 All E.R. 118, 1 C.C.R. 254 (U.K. C.A.) Lord Denning M.R.

ROYALTIES

See also ALL LANDS, MINES, MINERALS AND ROYALTIES; BONA VACANCIA; BONA VACANTIA; INVENTOR; UNITS OF PRODUCTION.

Privy Council

♦ Assuming then, though without deciding, that the term "royalties" as used in s. 109 of the *Constitution Act*, 1867 (30 & 31 Vict.), c. 3 is apt to include fines imposed for infraction of the criminal law, their Lordships reach the conclusion that any right conferred by that section on the Province of Ontario to claim fines as "royalties" extends only to such fines as have not been otherwise appropriated by competent authority and that the Dominion Parliament is an authority competent to direct that, and how, such fines may be otherwise appropriated.
(Criminal Law)

Toronto (City) v. R., [1932] 1 D.L.R. 161 at 165, 56 C.C.C. 273 (Ont. P.C.) the court per Lord Macmillan

Supreme Court of Canada

♦ The word ["royalties" (contained in s. 3(1)(f) of the *Income War Tax Act*, R.S.C. 1927, c. 97)] does not bear the original meaning ascribed to it as rights belonging to the Crown jure coranae . . . it has a special sense when used in mining grants or licences signifying that part of the reddendum which is variable and depends upon the quantity of minerals gotten. It is a well-known term in connection with patents and copyrights.
(Taxation)

Minister of National Revenue v. Wain-Town Gas & Oil Co., [1952] 2 S.C.R. 377 at 382, 13 Fox. Pat. C. 5, [1952] C.T.C. 147, 16 C.P.R. 73, [1952] 4 D.L.R. 81, 52 D.T.C. 1138 Kerwin J. (Rinfret C.J.C., Kerwin and Taschereau concurring)

♦ The expression "royalties" in the [*Income War Tax Act*, R.S.C. 1927, c. 97, s. 3(1)(f)], in the absence of a statutory definition, is to be assigned its ordinary meaning . . . It is not, however, in the sense of a royal prerogative or right that the word is used in the [*Income War Tax Act*], but rather in the sense that the word is commonly used in business transactions to describe sums paid for the right to use a patent or copyright, or to exercise some incorporeal right, or some payment to be made from the production from property the ownership of which remains vested in the grantor.
(Taxation)

Minister of National Revenue v. Wain-Town Gas & Oil Co., [1952] 2 S.C.R. 377 at 390, 13 Fox. Pat. C. 5, [1952] C.T.C. 147, 16 C.P.R. 73, [1952] 4 D.L.R. 81, 52 D.T.C. 1138 Locke J. (dissenting)

♦ . . . that the company shall dispose of all its prospective profits . . . by the creation of fractions or interests (called "royalties" or "units of production") in the prospective profits of the company; sufficient of these to be sold to the public to raise the necessary money and the balance to become the property of the vendors to the company.
(Taxation)

Snyder v. Minister of National Revenue, [1939] S.C.R. 384 at 395, [1939] 3 D.L.R. 506 Davis J. (Rinfret J. concurring)

♦ . . . the term "royalties" in sec. 6 109 [of the *Constitution Act, 1867* (30 & 31 Vict.), c. 3] following the words "lands, mines, minerals," should be construed as limited to royalties incident to or arising out of the preceding words. In other words, the term "royalties" extends to such as arise out of territorial rights only, and does not extend to bona vacantia . . .
(Constitutional Law; Corporations)

R. v. British Columbia (Attorney General) (1922) 68 D.L.R. 106 at 109, 63 S.C.R. 622, [1922] 3 W.W.R., 269 Davies C.J. (dissenting)

♦ That bona vacantia falls within the term "royalties" regalitates, *jura regalia* or *jura regia*, when used without restriction, is authoritatively settled in *Attorney-General of Ontario v. Mercer*, 8 App. Cas. 767, at pp. 778-9, where the holding to that effect in *Dyke v. Walford* [(1846), 13 E.R. 557] is accepted and a passage from the argument of Mr. Ellis in support of that view (at p. 480) is expressly approved.
(Corporations; Constitutional Law)

R. v. British Columbia (Attorney General) (1922) 68 D.L.R. 106 at 115, 63 S.C.R. 622, [1922] 3 W.W.R. 269 Anglin J.

♦ . . . the word "royalties" [in the phrase "all lands, mines, minerals and royalties"] in sec. 109 [of the *Constitution Act, 1867* (30 & 31 Vict.), c. 3], should be construed in its primary and natural sense as being the equivalent in English of jura

regalia. thus construed, it comprises bona vacantia (see *Dyke v. Walford*, 13 E.R. 557 approved by the Judicial Committee in the *Mercer* case).
(Corporations; Constitutional Law)

R. v. British Columbia (Attorney General) (1922) 68 D.L.R. 106 at 119, 63 S.C.R. 622, [1922] 3 W.W.R. 269 Mignault J.

♦ . . . the conjunction "and" [in the phrase "all lands, mines, minerals and royalties"] in said section 109 [of the *Constitution Act, 1867* (30 & 31 Vict.) c. 3], [that, with respect to the term "royalties"] indicates [that there was] to be given a separate and distinctly additional item of subject matter or class of revenue, to be assigned to each of the respective Provinces . . . the appellant Province is entitled by such reading alone to the bona vacantia in question.
(Constitutional Law; Corporations)

R. v. British Columbia (Attorney General) (1922), 68 D.L.R. 106 at 112, 63 S.C.R. 622, [1922] 3 W.W.R. 269 Idington J.

♦ The present appellant in his factum claims that "the word 'royalties' has relation back only to mines and minerals." This was, perhaps, the main contention put forward by the Dominion in [*Ontario (Attorney General) v. Mercer*, (1883), 8 App. Cas. 767 (Can. P.C.)] and their Lordships say, at p. 779:

> The question is whether the word "royalties" ought to be restrained to rights connected with mines and minerals only, to the exclusion of royalties, such as escheats, in respect of lands. Their Lordships find nothing in the subject, or the context, or in any other part of the Act, to justify such a restriction of its sense.

It is useless to ask us to find now that the word in the same subject and context has the opposite meaning to that placed upon it by their Lordships.
(Estates)

Trusts & Guarantee Co. v. R. (1916), 32 D.L.R. 469 at 471, [1917] 1 W.W.R. 358, 54 S.C.R. 107, 35 W.L.R. 358 Fitzpatrick C.J.

♦ "Royalties" [contained in R.S.N.B. 1877, c. 5, s. 1] as to mines is well understood in England to be the sums paid to the sovereign for the right to work the royal mines of gold and silver; and to the owner of private lands, for the right to work mines of the inferior metals, coal, etc.
(Mines and Minerals)

Ontario (Attorney General) v. Mercer (1879), 5 S.C.R. 538 at 666 Henry J.

♦ The connection in which the words "Crown lands, mines, minerals and royalties" are used in this Act [R.S.N.B., 1877, c. 5, s. 1] plainly shews that under these words is meant to be designated wholly different property from any accruing to the Crown by reason of escheat or forfeiture, and that the word "royalties" is intended to describe and cover merely monies, or part of the produce of the mines, arising from lease or other disposition of mines.
(Mines and Minerals)

Ontario (Attorney General) v. Mercer (1879), 5 S.C.R. 538 at 688 Gwynne J.

Federal

♦ In *Vauban Productions v. Her Majesty the Queen*, [1975] C.T.C. 511 . . . Addy, J defined royalties in the following way:

> The term "royalties" normally refers to a share in the profits or a share or percentage of a profit based on user or on the number of units, copies or articles sold, rented or used. When referring to a right, the amount of the royalty is related in some way to the degree of use of that right. This is evident from the dictionary definitions of the word "Royalty" when used in connection with a sum payable. Royalties, which are akin to rental payments, have invariably been considered as income since they are based either on the degree of use of the right or on the duration of the use, while a lump sum payment for the absolute transfer of a right, without regard to the use to be made of it, is of its nature considered a capital payment . .
> .

(Taxation)

Porta-Test Systems Ltd. v. R., [1980] C.T.C. 71 at 75, 80 D.T.C. 6046 (Fed. T.D.) Primrose J.

♦ The term "royalties" normally refers to a share in the profits or a share or percentage of a profit based on user or on the number of units, copies or articles sold, rented or used . . . Royalties, which are akin to rental payments, have invariably been considered as income since they are either based on the degree of use of the right or on the duration of the use, while a lump sum payment for the absolute transfer of a right, without regard to the use to be made of it, is of its nature considered a capital payment, although it may of course be taxable as income in the hands of the recipient if it is part of that taxpayer's regular business.
(Taxation)

Vauban Productions v. R., [1975] C.T.C. 511 at 513, [1976] 1 F.C. 65, 75 D.T.C. 5371 (T.D.) Addy J.

♦ Royalties, in reference to mines or wells [within s. 3(1)(f) of the *Income War Tax Act*, R.S.C. 1927, c. 97] in all the definitions, are periodical payments either in kind or money which depend upon and vary in amount according to the production or use of the mine or well, and are payable for the right to explore for, bring into production and dispose of the oils or minerals yielded up. . . .
(Taxation)

Ross v. Minister of National Revenue, , [1950] C.T.C. 169 at 176, [1950] Ex. C.R. 411, 50 D.T.C. 775 Cameron J.

♦ In his reasons for judgment [in *Ontario (Attorney General) v. Mercer* (1883), 8 App. Cas. 767 (Can. P.C.)], Selborne L.C., is quoted as saying that,

> . . . in its primary and natural sense, "royalties" is merely the English translation or equivalent of "regalitates," "jura regalia," "jura regia," etc.; and he adds:
> The subject was discussed with much fullness of learning in *Dyke v. Walford*, 5 Moore P.C. 434, where a Crown grant of jura regalia belonging to the County Palatine of Lancaster, was held to pass the right to bona vacantia. That it is a jus . . . is indisputable; it must also be regale; for the Crown holds it generally through England by Royal prerogative, and it goes to the successor of the Crown, not to the heir or personal representative of the Sovereign. It stands on the same footing as the right to escheats, etc., etc. With this statement of the law, their Lordships agree, and they consider it to have been in substance affirmed by the judgment of Her Majesty in Council in that case.

(Estates)

Trusts & Guarantee Co. v. R. (1916), 26 D.L.R. 129 at 135, 136, 15 Ex. C.R. 403 Cassels J.

Québec

♦ Now what are "Royalties"? In the largest sense of the word they are all royal prerogatives. It is evident that the word is not used in that sense and it must be limited. But how far? It would be manifestly indefensible to limit it to the royalties arising from mines of gold and silver, and therefore it would seem fair to make it extend to all those minor prerogatives of the crown which formed part of the property of the crown.
(Estates)

Quebec (Attorney General) v. Canada (Attorney General) (1876), 2 Que. L.R. 236 at 244 (Q.B.) Ramsay J.

♦ By section 109 of the [*Constitution Act 1867* (30 & 31 Vict.), c. 3] it is declared that all lands, mines, minerals and royalties, belonging to the several Provinces of Canada, Nova Scotia and New Brunswick, at the Union, and all sums then due or payable for such lands, mines, minerals or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, in which the same are situate or arise. This covers all reversions as well as existing lands, mines, minerals and royalties. Escheats, of the nature of the one in question, are royalties. See Brown's law dictionary, p. 317, where he defines royalties to be rights and prerogatives of the King. 1 Blackstone 241.
(Estates)

Quebec (Attorney General) v. Canada (Attorney General) (1876), 2 Que. L.R. 236 at 245 (Q.B.) Sanborn J.

Manitoba

♦ Sec. 109 of [the *Constitution Act, 1867*, (30 & 31 Vict.), c. 3], states that royalties belong to the province, and the term royalties has been held to include bona vacantia.
(Constitutional Law)

Winding-Up Act, Re (1939), (sub nom. Imperial Canadian Trust Co., Re) 21 C.B.R. 48 at 52, (sub nom. Imperial Canadian Trust Co., Re) [1939] 3 W.W.R. 232, [1939] 4 D.L.R. 75 (Man. K.B.) McPherson C.J.K.B.

Ontario

♦ The question was much discussed in the case of *The Attorney-General of Ontario v. Mercer* (1883), 8 App. Cas. 767, at p. 778, by the Privy Council, as to the meaning to be attached to the word "royalties" in s. 109 of the [*Constitution Act, 1867* (30 & 31 Vict.), c. 3]; and the same question again arose in *Attorney-General of British Columbia v. Attorney-General of Canada* (1889), 14 App. Cas. 295, the British Columbia mines case, and is discussed at p. 304. It was found unnecessary for the decision of the points involved in these cases to determine the question; but in each of them a strong expression of opinion is to be found in favour of giving to the word its natural and large sense of jura regalia or regalitates, that is to say the prerogative rights of the Crown and the revenues derived from them, and not restricting it to a payment or percentage upon the product of mines by the application of the rule noscitur a sociis.
(Constitutional Law)

Perry v. Clergue (1903), 5 O.L.R. 357 at 362 (H.C.) Street J.

♦ . . . in *The King v. A.-G. B.C.*, [1923] 4 D.L.R. 690 (P.C.) . . . It was there held that the word "royalties" in s. 109 of the [*Constitution Act, 1867*, (30 & 31 Vict.), c. 3] is not limited in its scope to the words preceding it, "lands, mines and minerals," but must be construed in its natural sense as the equivalent in English of "jura regalia," and therefore included what were, upon the admission of both the parties to the litigation, bona vacantia.

. . .

. . . the fine [for an offence which was an offence at Common Law] . . . is not a royality that was at any time "belonging to" the Province.
(Criminal Law)

R. v. Toronto (City), [1930] 4 D.L.R. 553 at 553, 554, 54 C.C.C. 72, 65 O.L.R. 3 Latchford C.J. (dissenting)

ROYALTIES OF THE SEA

British Columbia

♦ . . . having in mind the language of the original grant . . . that is to say, "together with all the royalties of the seas upon these coasts" . . . not only did the grant of 1849 pass title to the lands lying between high and low-water mark . . . but . . . it was the express intention that the document should pass title thereto.
(Waters and Watercourses)

Hirst Estate Land Co., Re (1943), 59 B.C.R. 321 at 329, [1943] 2 W.W.R. 666, [1943] 4 D.L.R. 422 (S.C.) Bird J.

ROYALTY
See also DUE REWARD; GROSS ROYALTY OR SHARE OF PRODUCTION; OVERRIDING ROYALTY.

Federal

♦ The . . . question . . . is whether the payment received . . . represents a capital payment or a payment on account of royalties or other like periodical receipts [and taxable as income under s. 3(1)(f) of the *Income War Tax Act*, [R.S.C. 1927, c. 97].

. . . everything in the agreement between the parties goes to show that the amount which is to be received by the appellant for the sale of this product is determined by the quantity of merchandise sold and must be considered as having been made in payment of royalties.
(Taxation)

R. v. Minister of National Revenue (1950), 2 Tax A.B.C. 364 at 373, 379, 49-50 D.T.C. 398 (Can. Tax App. Bd.) Monet K.C. (Assistant Chair)

Saskatchewan

♦ . . . the payments are, "In consideration of the obligations assumed by the manager . . .". Such payments . . . do not come within the definition of "royalty" in reference to mines or wells.
(Taxation)

Canpar Holdings Ltd. v. Saskatchewan (Ministry of Energy & Mines)((1985), 39 Sask. R. 12 at 20 (Q.B.) Hrabinsky J.

ROYALTY PAYMENT
See SPECIAL ARRANGEMENT BETWEEN EXPORTER.

ROYALTY SURCHARGE
See SURCHARGE.

RUBBER
See RUBBER, CRUDE, UNMANUFACTURED, N.O.P.; MANUFACTURES OF RUBBER, N.O.P.

RUBBER BOOTS AND SHOES
See SHOES OF ANY MATERIAL, N.O.P.

RUBBER, CRUDE, UNMANUFACTURED, N.O.P.
See also MANUFACTURES OF RUBBER, N.O.P.; RUBBER.

Federal

♦ This is an appeal . . . from a declaration of the Tariff Board that certain rubber compound strips and slabs should be classified as rubber, crude, unmanufactured, n.o.p., under Tariff Item 61605-1 . . . The appellant determined . . . that the imported goods should be classified as manufactures of rubber, n.o.p. under Tariff Item 61800-1.

. . .

. . . the board quite correctly concluded that the use of "manufactures" as a noun in Tariff Item 61800-1 ". . . denotes the products of a completed manufacturing process ready for use in their designed function". Accordingly I conclude that since the compounds in issue were not for final use, they were not "manufactures" within the meaning of Tariff Item 61800-1.

. . .

. . . when one looks at the entire spectrum from "unmanufactured" to "manufactured", the goods in issue remain closer to the "unmanufactured" end of the spectrum. Their basic nature has not