

BETWEEN:

Toronto
1968
Feb. 13-16
Feb. 23

BRITISH PACIFIC LIFE INSUR-
ANCE COMPANY

APPELLANT;

AND

THE MINISTER OF NATIONAL
REVENUE

RESPONDENT.

Income—Income Tax Act, R.S.C. 1952, c. 148, s. 30,—“A life insurance corporation”—It is not the function of the Court to add words in interpreting the words of a statute.

The appellant was incorporated by Private Act of the Parliament of Canada to “make contracts of life insurance, personal accident insurance and sickness insurance”.

In 1959, the appellant acquired the rights and property and assumed the obligations and liabilities of British Pacific Insurance Company, a provincial corporation which was engaged in the accident and health business only.

The appellant continued to carry on this business, and in addition it immediately engaged in the life insurance business.

In the taxation years 1959, 1960 and 1961, the life insurance part of the appellant’s business was relatively small in relation to its total business.

The respondent re-assessed the appellant for income tax during these years in accordance with the provisions of the *Income Tax Act* other than section 30 on the basis that the appellant was not a life insurance company within the meaning of section 30 of the *Income Tax Act* because (1) it at no relevant time carried on the business of life insurance exclusively; or alternatively (2) during the said taxation years, the predominant business of the appellant was not life insurance.

Held, the appeal should be allowed with costs.

For the reasons stated in the judgment, the Court came to the conclusion that on a true interpretation of section 30 of the *Income Tax Act* in relation to the facts of this case, the appellant was “a life insurance corporation” within the meaning of those words in that section.

INCOME TAX APPEAL.

C. F. H. Carson, Q.C. and *S. D. Thom, Q.C.* for appellant.

C. R. O. Munro, Q.C. and *G. V. Anderson* for respondent.

GIBSON J. (orally):—This appeal is from the re-assessments for income tax dated March 22, 1965, for the taxation years 1959, 1960 and 1961 of the appellant.

The appellant was incorporated by Private Act of the Parliament of Canada assented to May 5, 1959, being 7-8

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Elizabeth II, chapter 58, with power to “make contracts of life insurance, personal accident insurance and sickness insurance”. (See Exhibit A-1). The appellant is a wholly-owned subsidiary (except for some qualifying shares) of Beneficial Standard Life Insurance Company, whose head office is in California.

In 1959 the appellant acquired the rights and property and assumed the obligations and liabilities of British Pacific Insurance Company, a provincial corporation incorporated under the British Columbia *Companies Act*. This provincial company was engaged in accident and health insurance business; it did no life insurance business. All staff and the business assets of this provincial company were taken over by the appellant, and it continued to carry on the accident and health business, and in addition it immediately engaged in the life insurance business.

Beneficial Standard Life Insurance Company subscribed \$500,000 of the capital stock of the appellant and paid it up. It also made a contribution of \$500,000 to the surplus of the appellant before the appellant commenced business.

By Certificate of Registry under the *Canadian and British Insurance Companies Act* issued by the Department of Insurance, Canada¹, on September 3, 1959, the appellant was authorized to transact in Canada the business of life insurance, personal accident insurance and sickness insurance and from that day to date, the appellant engaged in such business (see Exhibit A-8). Such Certificate of Registry was maintained in good standing at all relevant times.

The combined ordinary and group life insurance business of the appellant in force increased from \$956,809 at the end of 1959 to \$12,486,603 at the end of 1967 (see Exhibit A-25).

Commencing in the year 1959 and continuing to the present time the appellant has been actively engaged in the business of life insurance and has laid out substantial amounts of money and effort in the promotion of such business (see Exhibit A-24).

At all relevant times the appellant also has been accepted as a life insurance company by the Department of Insurance of Canada.

¹ 1952 Statutes of Canada, Chapter 31.

In the year 1959 and subsequent years certain amounts were credited or deemed to be credited to the shareholders' account of the appellant and taxes were paid thereon pursuant to the provisions of section 30 of the *Income Tax Act* as follows:

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	<u>1959</u>	<u>1960</u>	<u>1961</u>
Credit to shareholders' account	\$ 1,746.00	\$ 22,179.00	\$ 23,314.00
Tax paid	331.07	4,112.74	4,198.62

By Notices of Re-assessment dated March 22, 1965, the Minister of National Revenue added to the appellant's income certain amounts described as "Additional Income as reported by the Superintendent of Insurance" to the taxable income of the appellant for the years 1959, 1960 and 1961.

The amounts so added according to the Minister were "computed in accordance with the provisions of the *Income Tax Act* other than section 30 thereof" and were \$25,385.50, \$107,408.67 and \$300,454.34 respectively.

The dispute between the parties as to the amount of income tax payable for the three years in question as a consequence is substantial, being of the order of \$168,000.

According to the pleadings of the Minister, in making these re-assessments the Minister acted on the following assumptions:

(a) The Appellant was carrying on the business of transacting accident and sickness insurance as well as life insurance during the taxation years in question herein.

(b) The premiums received by the Appellant in respect of life insurance policies during the taxation years 1959, 1960 and 1961 comprised .16 per cent, 1.02 per cent and 1.68 per cent respectively of the total premiums received by the Appellant in respect of accident and sickness and life insurance policies during the said taxation years.

(c) The Appellant was not a life insurance corporation within the meaning of section 30 of the *Income Tax Act*, Revised Statutes of Canada 1952, Chapter 148, and its taxable income therefore was not to be computed in the manner prescribed by the said section.

In consequence of those assumptions the Minister pleaded in his reply as follows:

(a) The Respondent says that the Appellant was not a life insurance corporation within the meaning of section 30 of the *Income Tax Act* Revised Statutes of Canada 1952, Chapter 148, and its taxable income is not to be computed in the manner prescribed by the said section.

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(b) In the alternative if the Appellant is a "life insurance corporation" within the meaning of section 30 of the *Income Tax Act* Revised Statutes of Canada 1952, Chapter 148, the Respondent submits that the Appellant is entitled by virtue of the said section to compute in the manner prescribed therein its taxable income derived from its life insurance business only; and the taxable income derived from all other business of the Appellant is to be computed in accordance with the provisions of the *Income Tax Act* other than the said section 30.

The facts upon which the Minister relies for such reassessments are also put in written answers to the undertaking given by counsel for the respondent on the examination for discovery of H. A. Stevens, an official of the respondent, as follows: (see page 3 of Exhibit A-2)

The facts relied upon for the allegation that the Appellant is not a life insurance corporation are:

(a) it has at no time carried on the business of life insurance exclusively, or alternatively,

(b) during the taxation years in question the predominant business of the Appellant was not life insurance.

The facts relied upon at this time in relation to (b) are:

(1) the Appellant is merely the successor of the British Pacific Insurance Company which at no time sold life insurance, and

(2) during the taxation years in question

(i) the revenues of the Appellant were derived predominantly from its accident-health insurance business,

(ii) the majority of the Appellant's employees were engaged in its accident-health insurance business,

(iii) the volume of business done by the Appellant, in terms of numbers of policies written or placed was predominantly accident-health insurance,

(iv) the expenses incurred by the Appellant were predominantly in the course of its accident-health insurance business.

The then Minister of National Revenue, the late Honourable John R. Garland by letter dated March 11, 1964, to Mr. S. D. Thom, Q.C., put the issue in dispute in this way: (see page 29 of Exhibit A-3)

As agreed during our interview on February 21st I am writing you regarding the claim of your client, British Pacific Life Insurance Company, that it should be considered a life insurance corporation for the purpose of Section 30 of the *Income Tax Act*.

Further consideration has been given to the grounds on which the Department takes the position outlined in our letters of November 14th, 1963 and January 8th, 1964 and to the arguments advanced by Mr. Lando and yourself at our meeting. The opinion is still held that your client may not be treated in the manner it claims.

The difference of opinion in this matter which exists between Departmental officials and yourselves stems, of course, from differing interpretations of the term "life insurance corporation" in section 30.

You have indicated that in your opinion the mere possession of the power to transact life insurance business entitles a taxpayer to the benefit of section 30 even though it transacts other kinds of insurance business far greater in volume and importance than that of its life business. Some Departmental officials interpret the term to mean only corporations whose sole business is life insurance. In practice, such a restricted interpretation has not been adopted but it is insisted that a company's business be predominantly life insurance before it may be considered to be covered by the term for tax purposes. Your client's business consists almost entirely of the sickness and accident business taken over from its predecessor. It is understood that in 1962 life premiums made up less than 3% of total premiums. A company with such a small amount of life insurance business does not merit treatment as a life insurance corporation under the Department's interpretation of the term.

The discussions and correspondence we have had indicate that the views of Departmental officials on this matter are quite firmly held. It is felt therefore that assessment should be proceeded with and our Vancouver Office is being advised to this effect. There will be of course opportunity for further discussion at the appeal stage if you decide to take that course.

The appellant takes the position on this appeal that it never submitted, as stated in this letter, that "the mere possession of the power to transact life insurance business entitles a taxpayer to the benefit of section 30".

On November 17, 1964, the then Minister of National Revenue the Honourable E. J. Benson wrote a further letter to Mr. Thom, again setting out the issue in dispute and suggesting the manner in which it should be resolved. (See page 31 of Exhibit A-3).

I wish to acknowledge your letter of 31st August, 1964, with which you enclosed a memorandum dealing with the history of British Pacific Life Insurance Company and giving reasons why it is considered that the company should be regarded as a life insurance corporation under Section 30 of the *Income Tax Act*. I also acknowledge your letter of 15th September advising of the progress being made in the United States by Beneficial Standard Life Insurance Company, parent company of British Pacific.

Your submission and previous correspondence on this matter have been reviewed and I can well understand the difficulty that arises in interpreting Section 30 of the *Income Tax Act*. It seems clear that further discussions will not reconcile the conflicting views held by you and Departmental officials on the question of what constitutes a life insurance corporation under that section. The normal procedure in such circumstances is to let the Court decide the question of interpretation and in order to get the Court's opinion an assessment has to be made and an appeal must be lodged by the taxpayer.

I think that this case should now be permitted to follow this procedure. With this in mind I am giving instructions to the Taxation Division to proceed with the assessments on the basis previously proposed.

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In carrying out Mr. Benson's direction, on February 16, 1965, the Vancouver office of the Department of National Revenue wrote the appellant and therein asked it to elect to be assessed in either one of two ways. (See page 32 of Exhibit A-3). That letter reads in part as follows:

If you wish the Life Department figures to be taxed under Section 30 of the *Income Tax Act*, the approximate taxes thereon would be:

1959 (re \$ 1,746.00)	\$ 330.91
1960 (re \$22,179 00)	\$4,112.81
1961 (re \$23,314.00)	\$4,198.00

At the same time the Casualty taxable amounts would be subject to tax at usual corporation rates by a separate calculation.

As an alternative, if you prefer, and on the assumption you confirm the figures in the first paragraph, we are prepared to assess as follows:

	<u>1959</u>	<u>1960</u>	<u>1961</u>
Life	\$ 1,372.00	(\$ 1,447.00)	\$ 18,150.00
		(Loss)	
Casualty	24,013.50	108,855.67	282,304.34
Taxable Amount	<u>\$25,385.50</u>	<u>\$107,408.67</u>	<u>\$300,454.34</u>

These taxable amounts would be taxed at the usual corporation rates set forth in Section 39 of the *Income Tax Act* and the rate as provided by the *Old Age Security Act*.

Will you please consider the above and advise us which method you prefer. If you wish to have the two Departments netted we will expect you to continue on this basis.

Your confirmation of the Life Department profits (loss) figures as set forth in our first paragraph, and your advice as to whether you wish the Life Department taxable incomes treated under Section 30 or that they be netted with the Casualty taxable amounts for the application of Section 39 rates is requested.

Your reply within three weeks would be appreciated.

The appellant replied to this letter on February 26, 1965, as follows: (see page 36 of Exhibit A-3)

Department of National Revenue (Ottawa) is well aware of the fact that, in our studied opinion, this Company comes squarely within the provisions of Section 30 of *Income Tax Act* and is not subject in any way, shape or form to the taxation you suggest. Under these circumstances it is our intention to appeal any such assessment, and we are advised that it would be improper for the Company at this time to make a selection of either of your alternate propositions.

The opinion of the Superintendent of the Department of Insurance of Canada was that the method that should be employed in taxing the income of the appellant during this relevant period is pursuant to the provisions of section

30 of the *Income Tax Act* and not pursuant to the provisions of the Act other than section 30, as was done by the said re-assessments for income tax.

At this trial, it was common ground between the parties that at all relevant times the appellant was engaged in a *bona fide* manner in the life insurance business.

At this trial, also, it was established in evidence that the predominant part of the business of the appellant during the years 1959, 1960 and 1961 was in the accident and health field and not in the life field, but that progressively this situation changed and by 1967, as noted, the amount of life insurance which the appellant had in force was very substantial, which result had come about by reason of the very considerable effort and expenditure of money by the appellant over the whole of the period since its incorporation and commencement of business in 1959 to 1967.

Counsel for the appellant submitted among other things that there was no definition of "a life insurance corporation" in section 30 or in any other section of the *Income Tax Act*; and that no regulation had been passed pursuant to the enabling authority of section 117(b) of the Act "prescribing the evidence required to establish facts relevant to assessments under this Act."; that the Minister to support these re-assessments was asking the Court to legislate by adding alternatively either the word "exclusive" or the word "predominantly" or equivalent words in section 30 of the *Income Tax Act* in relation to the business of "a life insurance corporation"; and that in any event the facts relied on by the Minister to support his submissions that "predominant" is the test to qualify the income of the appellant as eligible for taxation under section 30 of the Act as set out above, (see page 3 of Exhibit A-3) are not the critical facts, but instead (1) the matter of reserves, (2) the investment income and (3) the agency development expense, are more meaningful.

Counsel for the respondent submitted three alternative positions regarding the meaning of section 30 of the *Income Tax Act*, namely, (1) that "a life insurance corporation" is a corporation whose business is "exclusively" life insurance; or (2) that it is one whose business is "predominantly" life insurance; or (3) that section 30

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of the Act only applies *qua* the life insurance part of the business of a life insurance corporation that also carries on an accident and health business.

In support of these positions counsel among other things submitted: (1) that section 30 of the *Income Tax Act* is an exemption provision and if ambiguous, must be construed against the taxpayer; (2) that the equivalent of section 30 of the Act has been in the Canadian income statute since the first *Income Tax Act* in this country, *viz*, the *Income War Tax Act*, Statutes of Canada 1917, chapter 28; (3) that the meaning of a "life insurance corporation" must be used in the sense used by Parliament in 1917; and that in consequence it is proper to assume that when Parliament in this taxing statute (*The Income War Tax Act*) referred to a "life insurance corporation" it used the words in the same sense that it used them in legislation enacted for the purpose of regulating insurance corporations, and therefore *The Insurance Act*, Statutes of Canada 1917, chapter 29 is a statute in *pari materia*; that a proper inference to be drawn from the language employed in *The Insurance Act* of 1917, particularly section 8(1), section 31(1) and (6), section 79 and especially section 104 which purports to describe what is meant by "shareholders' account", is that Parliament only intended to grant a special right regarding the taxation of income *qua* the income from the life business only and not *qua* the income from the accident and health businesses; and that in fact Parliament intended that life insurance corporations should transact life business only; (4) that if section 30 of the *Income Tax Act* is not a continuation of the law of 1917, then Parliament intended that the business of a life insurance corporation be predominantly in the life field before such a corporation was entitled to be taxed under section 30 of the *Income Tax Act*, and that the omission of the word "predominant" or an equivalent word or words in section 30 of the Act to spell this out more unequivocally was because it was considered unnecessary in view of the said history of the enactment of this provision originally in the 1917 statute; and finally (5) that in employing section 30 of the *Income Tax Act* in taxing the income of a life insurance corporation, only the income of such corporation in so far as it is a life insurance corporation, is entitled to the benefit of this section, because again of the historical

origin of this section when no one thought that a life insurance corporation would carry on any other business along with its life insurance business.

So much for the submission of counsel.

My reasons for coming to the conclusion that I do, may be put briefly: (1) the appellant is and was at all material times in the life insurance business in a *bona fide* manner and has expended most substantial effort and money from incorporation to date in getting into the life insurance business; (2) the 1948 *Income Tax Act* was an entirely new act, and the date of its enactment is the date which should be looked at in considering the meaning of "a life insurance corporation" in section 30 of the present Act; (3) section 30 of the *Income Tax Act* is not an exempting provision. It is a special provision prescribing the method to be employed in taxing the income of life insurance corporations, and is no different than, for example, section 69 of the Act which prescribes special provisions for the taxation of the income of investment companies; (4) the Act incorporating the appellant company at clause 6, authorized the appellant to be in the life insurance business; and the name granted in this Act by Parliament to the appellant, namely, British Pacific Life Insurance Company is some evidence of Parliament's intent; (5) the Certificate of Registry under the *Canadian and British Insurance Companies Act*, Statutes of Canada 1952, chapter 31, authorized the appellant to engage in the life insurance business; and Part IV of that Act applies to this appellant; (6) section 30 of the *Income Tax Act* is not an escape from taxation but merely a type of deferral²; (7) neither in section 30 nor in any other section of the *Income Tax Act* is there a definition of "a life insurance corporation"; (8) no regulations have been passed pursuant to the enabling provisions of section 117(b) of the Act "prescribing the evidence required to establish facts relevant to assessments under this Act" and the facts alleged and proved therefore are no guide as to what should be considered in coming to a conclusion as to what are the necessary constituent elements of a business of a corporation to qualify it as a "life insurance corporation" within the meaning of section 30 of the Act; (9) if

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² (See in this connection section 84 of the *Canadian and British Insurance Companies Act*.)

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Parliament had meant to qualify section 30 of the Act with either the word "sole" or "exclusive" or the word "predominant" or with equivalent words in relation to the business of a "life insurance corporation", or to have it apply only to the life insurance part of the whole business of such a corporation as the appellant, it would have said so, as it did, for example, in section 13, section 83A(2), section 83A(3), section 83A(3a), section 83A(3b) and section 83A(3c) of the *Income Tax Act*; and finally (10) it is not the function of the Court to add words in interpreting the words of a statute. In this connection, the words of Lord Simonds in *Magor and St. Mellons Rural District Council v. Newport Corporation*³ in relation to what was suggested as the correct procedure for a Court to adopt in interpreting a statute, namely, "What the legislature has not written, the court must write", are apposite here, namely:

It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act.⁴

For these said reasons, the conclusion that I have come to, is that on a true interpretation of section 30 of the *Income Tax Act* in relation to the facts of this case, the appellant is "a life insurance corporation" within the meaning of those words in that section.

It follows therefore that what is the subject matter of this appeal is the taxable income of the appellant from all sources and not just its income from one source, namely, the income from the life insurance part of its business; and the correct method of computing such taxable income is pursuant to section 30 of the *Income Tax Act* and not pursuant to the provisions of the Act other than section 30.

The appeal is therefore allowed and the re-assessments are vacated.

The appellant is entitled to its costs.

³ [1952] A.C. 189 at 191.

⁴ Compare also Craies on *Statute Law*, 6th Edition, pages 70 and 71; and 3 Halsbury, Volume 36, page 387.