

Ottawa, Wednesday, March 27, 1991

Appeal No. 2312

IN THE MATTER OF an application heard on
January 31, 1991, under section 59 of the *Excise
Tax Act*, R.S.C., 1970, c. E-13.

BETWEEN

**SOUTHAM BUSINESS INFORMATION
AND COMMUNICATIONS GROUP INC.**

Applicant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The application is dismissed. The Tribunal finds that the goods at issue do not fall within the exempting provision of paragraph 3(a), Part III, Schedule III to the *Excise Tax Act*.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2312

**SOUTHAM BUSINESS INFORMATION
AND COMMUNICATIONS GROUP INC.**

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an application under section 59 of the Excise Tax Act where the applicant seeks a declaration that the almanacs it publishes are exempt from sales tax because they are printed books that contain no advertisement and are solely for educational, technical, cultural or literary purposes as provided in the exempting provision set forth in paragraph 3(a), Part III, Schedule III to the Excise Tax Act.

HELD: *The appeal is dismissed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 31, 1991
Date of Decision: March 27, 1991

Tribunal Members: Charles A. Gracey, Presiding Member
Kathleen E. Macmillan, Member
W. Roy Hines, Member

Clerk of the Tribunal: Nicole Pelletier

Counsel for the Tribunal: Gilles B. Legault

Appearances: Jane E.B. Thompson, for the applicant
Alain Préfontaine, for the respondent

Cases Cited: *MacLean Hunter Limited v. The Deputy Minister of National Revenue for Customs and Excise, 11 T.B.R. 29, confirmed by the Federal Court of Appeal, 15 C.E.R. 340.*

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**SOUTHAM BUSINESS INFORMATION
AND COMMUNICATIONS GROUP INC.**

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
W. ROY HINES, Member

REASONS FOR DECISION

This is an application under section 59 of the *Excise Tax Act*¹ (the Act) where the applicant seeks a declaration from the Tribunal that the almanacs it publishes are exempt from sales tax.

ISSUE AND RELEVANT LEGISLATION

In this case, the Tribunal was assisted by both counsel for the applicant and the respondent who reached early agreement as to the relevant issues in the case. They agreed that the primary issue was whether the publication in question was to be considered exempt on the basis that it was "solely for educational, technical, cultural or literary purposes" in accordance with paragraph 3(a), Part III, Schedule III to the Act. The secondary issue was whether the publication should be excluded from exemption under the last part of section 3.

The relevant legislation in this application are subsections 27(1), 29(1) and 59(1) and paragraph 3(a), Part III, Schedule III to the Act. These provisions read as follows:

27.(1) There shall be imposed, levied and collected a consumption or sales tax of nine per cent on the sale price of all goods

(a) produced or manufactured in Canada

...

29.(1) The tax imposed by section 27 does not apply to the sale or importation of the goods mentioned in Schedule III, [other than those goods mentioned in Part XIII of Schedule III that are sold to or imported by persons exempt from consumption or sales tax under subsection 31(2).] [added June 29, 1982, S.C. 1982, c. 104, s. 9]

1. R.S.C., 1970, c. E-13, as amended.

59.(1) *Where any difference arises or where any doubt exists as to whether any or what rate of tax is payable on any article, on transportation by air or on the amount charged for a taxable service under this Act, the Tariff Board constituted by the Tariff Board Act may declare what rate of tax is payable thereon or that the article, transportation by air or amount charged for the taxable service is exempt from tax under this Act.*

SCHEDULE III

PART III

EDUCATIONAL, TECHNICAL, CULTURAL, RELIGIOUS AND LITERARY

...

3. *The following printed matter, articles and materials:*

(a) college and school annuals; unbound literary papers regularly issued at stated intervals not less frequently than four times yearly; sheet music; manuscripts; national manufacturing, industrial or trade directories; printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes; articles and materials for use exclusively in the manufacture or production of the foregoing;

...

but excluding albums, biographical, financial or statistical surveys and reports, books for writing or drawing upon, catalogues, colouring books, directories of all kinds not mentioned in this section, fashion books, guide books, periodic reports, price lists, rate books, timetables, year books, any other similar printed matter and any printed matter or part thereof or class of printed matter as may be designated by the Governor in Council.

FACTS

Before its abrogation in 1986,² section 59 of the Act provided that an applicant had the right to ask the Tariff Board for a declaration as to whether an article was exempt from tax under the Act. Such an application was sent by the applicant on May 17, 1985. However, on October 9, 1985, following an agreement between the parties, the Tariff Board accepted to adjourn the hearing *sine die*. The Board acknowledged that the appeal in *MacLean Hunter Limited v. The Deputy Minister of National Revenue for Customs and Excise*,³ which had raised a similar issue, was sufficient to allow the adjournment and the application was then placed at the bottom

2. *An Act to amend the Excise Tax Act and the Excise Act and to amend other Acts in consequence thereof*, S.C. 1986, c. 9, s. 46.

3. *MacLean Hunter Limited v. The Deputy Minister of National Revenue for Customs and Excise*, 11 T.B.R. 29, confirmed by the Federal Court of Appeal, 15 C.E.R. 340.

of the roll. The Federal Court of Appeal issued its decision on January 21, 1988. Since December 31, 1988, the Tribunal replaces the Tariff Board with respect to this application.⁴

The goods at issue, the 1981 Corpus Almanac of Canada (the Almanac), is a two-volume, 1078-page digest of facts and information about Canada. It is organized into 19 chapters with such headings as Education, Business Organization and Regulation, the Federal Government, the People, etc., and also includes an extensive index. The publication contains some photographs, maps and diagrams, but is predominately text. Of the text, a significant proportion -over one-quarter - is listings of names, addresses and other information concerning government departments, associations, churches, schools, libraries, trade unions, and various other institutions or businesses. The balance of the publication is devoted to descriptive text. The Almanac contains no advertisement.

Ms. Margot Jane Fawcett, the editor of the 1981 volume, testified in support of the applicant at the hearing. Ms. Fawcett stated that the philosophy behind the publication is to provide a unique reference source for librarians disseminating information about Canada. The content of the Almanac is largely determined through interviews with reference librarians as to their requirements. Information is then compiled from a variety of outside sources, typically, the actual institution or body being described in the publication. Ms. Fawcett also explained that the Almanac is updated annually by sending each contributor a copy of the previous year's entry and asking if any changes are desired or if the entry should remain unchanged.

According to Ms. Fawcett, approximately 20 to 40 percent of the almanac sales are to libraries located in educational institutions. However, sales to all libraries, including public and special libraries and libraries in commercial settings, would account for 75 percent of total sales. In addition, the Canadian Department of External Affairs, the Canadian International Development Agency and some provincial government departments purchase the publication for distribution to their missions abroad. Foreign embassies and consulates also buy the Almanac for their offices in Canada and at home.

Ms. Fawcett testified that the primary users of the Almanac are reference librarians who use it as a source of basic information for clients or as a tool for locating more detailed information on a particular topic. Other uses for the Almanac are to teach research skills to high school and library science students. Although Ms. Fawcett agreed that much of the material contained in the books is what one might consider to be of a directory nature, she maintained that the Almanac is not often used as a directory. There are, she maintained, more efficient ways of obtaining addresses and phone numbers than from this publication.

Mr. David Balatti, Chief of the Subject Analysis Division of the National Library of Canada and an expert in library classification, appeared as a witness for the respondent. He explained the methodology behind cataloguing in general and the Library of Congress and Dewey Decimal classifications in particular.

4. *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.) s. 60; *Canadian International Trade Tribunal Act*, Order Fixing December 31, 1988 as the Day on Which Sections 16 to 37, 41 to 62 and the Schedule to the Act Come into Force, P.C. 1988-2820, 22 December 1988.

Mr. Balatti described the classifications or call numbers given to the Almanac by the National Library of Canada. According to the Library of Congress classification number assigned, the Almanac is catalogued as a general work within the yearbooks, almanacs and directories subsection, and it pertains to Canada. The Dewey Decimal number assigned by the National Library classifies the Almanac as pertaining to Canada and falling within the subdivision of "directories of persons and organizations." Mr. Balatti also referred to two reference guidebooks used by reference librarians and entered into evidence by the respondent, describing the Almanac as a yearbook, directory, or annual.

In cross examination, Mr. Balatti indicated that it is possible that two different people assign different classification numbers to the same book. However, in his judgment, this would not happen frequently. In his view, it is also possible to classify a book two or more ways within the same library if the book deals with different subjects.

ARGUMENTS

Counsel for the applicant argued that the Almanac should be exempt from tax as they are "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes," thus fulfilling the requirement for exemption provided by paragraph 3(a). Furthermore, she argued, the goods are not excluded from the exemption by the later provisions of the same section.

In support of her arguments, counsel referred to various dictionary definitions that confer, in her view, a broad meaning to the term education. She argued that education is the acquisition of general knowledge or background and is, in that sense, distinct from the information or skills obtained as part of the tools of one's trade. She claimed that reference librarians act as educators for their clients. Other users of the book employ it in educational ways to gather background information that enhances their general qualifications or abilities. The book is also of cultural value since it is a compendium of information on Canadian culture and history, and it is used in this respect by Canadian and foreign embassies. Finally, the Almanac fulfils a technical use when employed as a reference book in library schools or when used to teach research techniques to library science students.

In considering the exclusions to the exemption provisions, counsel argued that the Almanac does not meet any of the definitions of a directory, yearbook or periodic report. By virtue of its extensive descriptive text, the Almanac is much more than a listing of names and addresses or a summary of developments that have occurred in the past year.

Finally, counsel argued that the statute should not be read as providing exemptions in one of its provisions and then removing them through its exclusions. Because the exclusions take away benefits otherwise granted by the exempting provisions, any doubt or ambiguity should be resolved in favor of the taxpayer and the evidentiary burden to the contrary should lie with Revenue Canada.

Counsel for the respondent argued that the Almanac is not solely for educational purposes and, therefore, that the conditions that would qualify the publication have not been met. He argued that one could acknowledge that all of life's experiences may have an educational component, but that the word "educational" has a more precise meaning related to the fundamental process of learning. He cited the *MacLean Hunter* case in this respect.

Counsel also pointed out that only 20 to 40 percent of the sales of the Almanac are to institutions of learning and that the balance is sold to the libraries of non-educational institutions where they are intended for uses other than educational. Counsel also argued that, even if it were determined that the Almanac had an educational value, it must nevertheless be excluded from exemption on the basis that it is really a combination of two of the exclusions to the exemption, namely a yearbook and a directory.

FINDING OF THE TRIBUNAL

In deciding whether the Almanac falls within the description contained in paragraph 3(a), Part III, Schedule III to the Act, and is therefore exempt from taxation, the Tribunal examined the content of the books, considered the testimony of witnesses as to the books' preparation and intended use, and took into account earlier decisions on the same exempting provisions.

The Tribunal accepts, as did both parties, that the goods are "printed books that contain no advertising." It remains for the Tribunal to determine whether the volumes are "solely for educational, technical, cultural, or literary purposes." Our interpretation of this phrase is that any work that fulfils any one purpose or a combination of educational, cultural, technical or literary purposes, and no other purpose, would qualify for exemption.

Turning first to the question of educational purpose, the Tribunal notes the opinion of The Federal Court of Appeal concerning the meaning of the word "education." In its decision in the *MacLean Hunter* case, which also concerned the exempting provision contained in paragraph 3(a), Part III, Schedule III to the Act, the Court stated:

*... when the word "education" or "educational" is used without qualification, it has reference to a fundamental process of learning which is aimed at preparing either for life in general or for a large purpose such as a particular profession or trade, and is in any event without an immediately utilitarian focus.*⁵

The Tribunal accepts the Federal Court of Appeal's interpretation and finds that it is applicable to this case. Although it can be said that all of life's experiences are educational in some sense, it is clear that the legislator did not intend to confer such a broad meaning to the phrase, "solely for educational purposes." Rather, in the Tribunal's view, the legislator intended to exempt books that are used in a more or less formal educational setting and that follow some curriculum, such as textbooks on mathematics or history. The Tribunal considers the material contained in the Almanac to be more in the nature of information than as material intended for educational purposes.

Turning to the terms "technical," "cultural" and "literary," the Tribunal finds, based on its examination of the Almanac, that it does not serve any technical purpose, within the common, ordinary meaning of the term. Though it lists authors, publishers, newspapers and magazines in Canada, nor can one reasonably conclude that a book containing such listings is intrinsically literary. Because the Almanac deals almost exclusively with Canadian matters, one could argue that it contains material on Canadian culture. However, to argue that this work fulfils a cultural role stretches the meaning of serving a cultural purpose.

5. *MacLean Hunter Limited v. The Deputy Minister of National Revenue for Customs and Excise*, 15 C.E.R 340, at p. 344.

The Tribunal accepts that at times the Almanac might be used for educational or cultural purposes. An example of an educational use, provided by the applicant's witness, was as an aid for teaching library science students reference and research skills. Similarly, to the extent that it is used by foreign embassies to provide information about Canadian culture and practices, it could possibly fulfil a limited cultural purpose as well. However, the word "solely" limits the exemption to those books that serve only those specific purposes. In the Tribunal's view, these cultural and educational uses are occasional and limited. Consequently, the Tribunal finds that the goods do not qualify for exemption as "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes."

Having determined that the goods at issue do not fall within the exempting provisions of paragraph 3(a), it is not necessary for the Tribunal to decide whether the goods are described under the exclusions to the exemptions contained later in section 3. Therefore, the Tribunal does not consider it necessary to address the arguments raised by counsel as to whether the goods constitute "directories of all kinds not mentioned in this section, periodic reports, yearbooks, any other similar printed matter."

CONCLUSION

The application is dismissed. The Tribunal finds that the goods at issue do not fall within the exempting provisions of paragraph 3(a), Part III, Schedule III to the Act.

Charles A. Gracey
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Presiding Member

Kathleen E. Macmillan
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