

Ottawa, Tuesday, July 11, 1989

Appeal No. 3003

IN THE MATTER OF an application heard March 29, 1989, pursuant to section 51.19 of the *Excise Tax Act*, R.S.C. 1970, c. E-13 (the Act) as amended;

AND IN THE MATTER OF a Notice of Decision of the Minister of National Revenue dated November 20, 1987, with respect to a Notice of Objection filed pursuant to section 51.15 of the Act.

BETWEEN

BOWNE OF CANADA, INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal declares the appellant's manufactured goods, Canadian Payments Association Directory, Volumes 1, 2 and 3, to be exempt from sales tax in accordance with paragraph 3(1)(a), Part III, Schedule III of the *Excise Tax Act* and puts aside the respondent's Notice of Decision, Number 70131RE, of November 20, 1987.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Kathleen Macmillan

Kathleen Macmillan
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 3003

BOWNE OF CANADA, INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Sales tax - Exemption - Whether three volumes of the Canadian Payments Association Directory should be exempt from sales tax by virtue of section 3, Part III, Schedule III of the Act on the basis that they are "national manufacturing, industrial or trade directories" or "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes."

Held: *The appeal is allowed. The Tribunal finds the three volumes to be exempt from sales tax in accordance with paragraph 3(1)(a), Part III, Schedule III of the Act on the basis that the three volumes are "national ... industrial ... directories."*

Place of hearing: Ottawa, Ontario

Date of hearing: March 29, 1989

Date of decision: July 11, 1989

*Panel Members: Arthur B. Trudeau, Presiding Member
Sidney A. Fraleigh, Member
Kathleen Macmillan, Member*

Counsel of the Tribunal: Lyne Letarte

Clerk of the Tribunal: Janet Rumball

*Appearances: Michael Kaylor, for the appellant
Barbara McIsaac, for the respondent*

Cases Cited: *Nowegijick v. the Queen [1983] 1 SCR 29.*

Statutes Cited: *Excise Tax Act, R.S.C. 1970, c. E-13, ss. 27(1), 27(1.1), 29(1) and s. 51.19 and ss. 3(1), Part III, Schedule III; Canadian International Trade Tribunal Act, S.C. 1988, c. 56, s. 60.*

Dictionaries Cited: *The Houghton Mifflin Canadian Dictionary of the English Language; Webster's New World Dictionary; the Shorter Oxford English Dictionary (3rd ed. Rev.); the Random House Dictionary of the English Language (2nd ed.).*

Appeal No. 3003

BOWNE OF CANADA, INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
SIDNEY A. FRALEIGH, Member
KATHLEEN MACMILLAN, Member

REASONS OF DECISION

SUMMARY

This is an appeal for a declaration that three volumes of the Canadian Payments Association Directory, on which the appellant had paid sales tax but subsequently filed a claim for a refund which was dismissed by the respondent, qualify for tax exemption under the Act¹ on the grounds that the three volumes are "national ... industrial or trade directories" or "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes." The three volumes are manufactured by the appellant in conjunction with the Canadian Payments Association which co-ordinates publishing and distribution. The volumes provide the names, addresses and other routing information for all financial institutions operating in Canada. Volume 1 covers Banks; Volume 2, Credit Unions and Caisses Populaires; and Volume 3, Trust Companies, Loan Companies and Other Deposit-Taking Financial Institutions. A claim for refund of sales tax was denied by the respondent, hence the reason for this appeal.

The appeal is allowed. The three volumes are declared to be exempt under the exempting provisions of the Act, as they qualify as national industrial directories.

THE LEGISLATION

The relevant statutory provisions of the Act are as follows:

- 27. (1) There shall be imposed, levied and collected a consumption or sales tax at the rate specified in subsection (1.1) on the sale price of all goods*
- (a) produced or manufactured in Canada*
- (i) payable, in any case other than a case mentioned in subparagraph (ii) or (iii), by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier,*

1. R.S.C. 1970, c. E-13; now R.S.C. 1985, c. E-15.

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).*

SCHEDULE III

PART III

EDUCATIONAL, TECHNICAL, CULTURAL, RELIGIOUS AND LITERARY

3. (1) *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.
[emphasis added]*

THE FACTS

This is an appeal made pursuant to section 51.19 of the Act as amended, from a Notice of Determination, Number ER TOR 15259, dated March 2, 1987, and confirmed by the Respondent's Notice of Decision, Number 70131RE, on November 20, 1987, dismissing the appellant's claim for refund of sales tax on Canadian Payments Association Directory, Volumes 1, 2 and 3 (the subject goods), manufactured by the appellant. The period of assessment is from December 1982 to December 1986.

The appellant seeks a declaration that the subject goods qualify for exemption from sales tax pursuant to paragraph 3(1)(a), Part III, Schedule III of the Act.

The appeal, being a continuation of proceedings commenced before the enactment of the *Canadian International Trade Tribunal Act*,² is continued by the Canadian International Trade Tribunal by virtue of section 60 of that Act.

2. S.C. 1988, c. 56.

The subject goods are called the Canadian Payments Association Directory. Volume 1 is on Banks; Volume 2, on Credit Unions and Caisses Populaires; and Volume 3, on Trust Companies, Loan Companies and Other Deposit-Taking Financial Institutions. They provide names, addresses and other routing information for all financial institutions operating in Canada.

Counsel for the appellant called four witnesses. The first was Mr. Bill Houston. He has been involved with the Canadian Payments Association Directory since World War II and is the co-ordinator for distribution and printing of the subject goods on behalf of the Canadian Payments Association (the Association).

The three volumes of the subject Directory were tendered in evidence. At the beginning of each volume, there is a short statement to the effect that the Association was established by Act of Parliament in 1980 to achieve two goals: (1) establish and operate a national clearings and settlements system, and (2) plan the evolution of the national payments system. Testimony revealed that the Association is the editor and publisher, and the appellant, the printer and distributor of the Directory. Publication of such a directory began as early as 1908.

All three volumes of the Directory have two sections. One section is a numerical list of head offices and branches. It supplies addresses, direct payment routing numbers and magnetic ink codes. The second section provides the same information arranged on the basis of an alphabetical list of geographical locations in Canada. Volume 1, the Directory of Banks, does not contain a section for institutions which are non-members of the Association, but the other two volumes do. The Directory is used to address correspondence, to locate specific branches, to distribute payroll, to check credit references, to make settlements and generally to facilitate communication among financial institutions. The word "Directory" appears on the front cover of each of the three volumes.

The members of the Association form a controlled list of purchasers, and it is on the basis of their orders that the decision is made as to how many copies of each volume is produced. Volume 1 covers all the chartered banks and Schedule B banks in Canada. In 1988, some 6,000 copies of this volume were printed. Of these, 4,500 were purchased by banks, 1,000 were bought by other corporations, and approximately 500 went unsold. It is estimated that one out of every three branches of banks in Canada has a 1988 copy of Volume 1. In 1988, 3,500 copies each of Volumes 2 and 3 were sold. Roughly 3,000 of these were bought by credit unions and trust companies. The remaining 500 were purchased by what was referred to as "general subscribers" which tend to be major corporations and insurance companies.

Three witnesses from the banking and trust community read excerpts from a series of publications which used the term "industry" to describe financial, banking and trust activities. Evidence presented included publications of banking and trust company associations such as reports by the Canadian Bankers' Association, the Trust Companies Association and the Canadian Cooperative Credit Society. Also introduced as evidence were materials prepared by individuals and groups outside the banking, credit union and trust community that applied the term "industry" to the financial services sector. Evidence included a speech written by an employee of the Ontario Ministry of Financial Institutions, a report entitled The Canadian Trust Industry. An Overview

(Exhibit A-16) dated August 26, 1988, and written by Wood Gundy, and a report prepared by the Toronto law firm of Smith, Lyons, Torrance, Stevenson and Mayer entitled The Canadian Financial Services Industry: Recent Proposals for Reform (Exhibit A-17) dated August 1986.

The respondent called no witness.

THE ISSUE

The issue is whether the subject goods, the Canadian Payments Association Directory, qualify for an exemption from excise tax under either of the following exempting categories contained in subsection 3(1), Part III, Schedule III of the Act: "national manufacturing, industrial or trade directories;" or "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes."

Failure to qualify under either of the two categories would subject the books to taxation on the basis that they constitute "directories of all kinds not mentioned in this section," and fall under the exceptions to the exemptions set out in paragraph 3(1)(b), Part III, Schedule III of the Act.

The primary focus of the hearing was whether the books qualify as "national ... industrial ... directories." Both the appellant and respondent agreed that the books could be considered as meeting the requirements of the words "national" and "directory." At issue was whether the term "industrial" would apply to the financial institutions listed therein, thus qualifying the books for an exemption provided under the Act as national industrial directories.

Counsel for the appellant argued that the subject goods qualify for an exemption from sales tax because they are "national ... industrial ... directories" within the meaning of paragraph 3(1)(a), Part III, Schedule III of the Act. He noted that they contain information about financial institutions all across Canada and on this basis, argued that they were national in scope.

Counsel argued that definitions of directory were broad enough to cover the goods in issue in this case.

Counsel for the appellant relied on and accepted the dictionary definitions of the word industry set out in the respondent's brief at tab 2, to argue that the term applied to the financial institution which in large part were the target clients for the books at issue.

The respondent's brief contains definitions of "industry" taken from four dictionaries. In their relevant parts, these definitions are as follows. "1. The commercial production and sale of goods and services.³ 2. A specific branch of manufacture and trade ...;⁴ 3. Any branch of trade, production or manufacture, or all of these collectively";⁵ 5. A particular branch of productive labour; a trade or manufacture."⁶

3. The Houghton Mifflin Canadian Dictionary of the English Language.

4. Ibid.

5. Webster's New World Dictionary.

6. The Shorter Oxford English Dictionary (3rd ed. Rev.).

Counsel noted as well that the members of the financial institutions covered by the subject goods refer to those institutions collectively as an industry. Finally, in this connection, he referred to a ruling made by the Minister of National Revenue, dated October 27, 1983, Code No. 5725/12. This ruling involved a directory containing an alphabetical list of certain goods and services, together with the names and addresses of companies in Canada which supplied those goods or performed those services. In the process of ruling that the above-mentioned directory was exempt from sales tax on the basis that it fell within the phrase "national manufacturing, industrial or trade directories," the Minister stated that "the inclusion of service related businesses in a directory would not preclude the directory from sales tax exemptions." Counsel for the appellant then referred to the case of *Nowegijick v. The Queen*⁷ at p. 37, where Dickson J. (as he then was) stated that, in cases of doubt concerning the meaning of words appearing in a statute, it is permissible to examine interpretations made in administrative rulings. On the basis of this case, counsel argued that it was open to the Tribunal to consult the above-mentioned ruling in deciding whether the subject goods constituted an industrial directory. He concluded by stating that they were exempt from sales tax on the basis that they were "national ... industrial ... directories" within the meaning of paragraph 3(1)(a), Part III, Schedule III of the Act.

Counsel for the respondent agreed that the subject goods were directories and that they were national. She then said that if the word "industrial" were understood to embrace not only the production goods, but the provision of services as well, then the subject goods would qualify for an exemption from sales tax. She did however argue that they are not trade directories arguing that "trade" had a very narrow meaning akin to craft or profession and that they do not qualify for an exemption on the basis that they are "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes." Counsel for the appellant did not argue very strenuously against this last contention; he conceded that there might be difficulties with arguing that the subject goods were covered by that phrase.

DECISION

Upon a review of the evidence, the Tribunal is satisfied that the subject goods are directories and are national as they cover a listing of names, addresses and other specialized information relating to banks, credit unions and trust companies located accross Canada.

The Tribunal accepts, on the basis of evidence presented, that the term "industry" is commonly used by members of the banking, trust, credit union, and caisse populaire system to describe their own activities. The Tribunal was also persuaded that outside observers, such as

7. [1983] 1 SCR 29.

members of the government and legal communities, view the financial services sector as an industry. The Tribunal notes that most, although not all, dictionary definitions of industry encompass service pursuits such as banking. One definition of industry as mentioned earlier is "The commercial production and sale of goods and services." Finally, the Random House Dictionary⁸ defines industrial, the adjective with which we are concerned, the following way:

Industrial: 1. of, pertaining to, of the nature of, or resulting from industry:...

There seems to be no reason in principle why the term "industrial" as it pertains to the word industry should be interpreted narrowly to exclude service activities. On the basis of common usage by persons both inside and outside the banking sphere, the Tribunal accepts the appellant's evidence to the effect that the financial institutions covered by the Canadian Payments Association Directory are part of the financial services industry and accordingly holds that the Directory is exempt from sales tax on the basis that it is a national industrial directory within the meaning of paragraph 3(1)(a), Part III, Schedule III of the Act.

In view of this decision, the Tribunal does not consider it necessary to decide whether the subject goods also qualify for an exemption on the basis that they are "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes" or on the basis that they constitute "national ... trade directories."

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Kathleen Macmillan

Kathleen Macmillan
Member

8. (2nd ed.), p. 975.