



Ottawa, Friday, November 9, 1990

Appeal No. 3030

IN THE MATTER OF an appeal heard on June 27 and 28, 1990, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated May 3, 1988, with respect to a notice of objection filed under section 81.15 of the *Excise Tax Act*.

BETWEEN

**GRAND SPECIALTIES LTD. and
THE PERRIER GROUP OF CANADA INC.**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

AND

OFFICE GÉNÉRAL DES EAUX MINÉRALES LIMITÉE

Intervenant

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that Perrier water, a carbonated mineral water, is a carbonated beverage within the meaning of paragraph 1(c), Part V, Schedule III to the *Excise Tax Act* and is, therefore, subject to the federal sales tax imposed by section 50 of the *Excise Tax Act*.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Charles A. Gracey

Charles A. Gracey
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 3030

**GRAND SPECIALTIES LTD. and
THE PERRIER GROUP OF CANADA INC.**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

and

OFFICE GÉNÉRAL DES EAUX MINÉRALES LIMITÉE

Intervenant

Excise tax Act - Sales Tax - Meaning of the term "carbonated beverage" - Carbonated mineral water - Paragraph 1(c), Part V, Schedule III to the Excise Tax Act (the Act) - Statutory Interpretation - English and French versions.

This is an appeal pursuant to section 81.19 of the Act by Grand Specialties Ltd. and The Perrier Group of Canada Inc. to set aside the decision of the Minister of National Revenue (the Minister) in which the Minister determined that Perrier water, a carbonated mineral water, falls within the category of goods specifically excluded from the exemption found in section 1, Part V, Schedule III to the Act, for "Food and drink for human consumption ... " and, therefore, is subject to federal sales tax.

The appellant imports, distributes and sells Perrier water in Canada. The issue in this appeal is whether Perrier water is a "carbonated beverage" within the meaning of paragraph 1(c), Part V, Schedule III to the Act, and is thereby subject to tax pursuant to section 50 of the Act. The appellant submitted that Perrier water is not a beverage because the ordinary meaning of the word includes prepared drinks or liquids, but expressly excludes water. In addition, the appellant argued that Parliament intended a "beverage" to mean a manufactured or prepared drink, but not a product such as Perrier water that occurs in the ordinary way of nature.

The respondent argued that dictionary definitions of the English word "beverage" are not consistent and that the French equivalent "boisson" includes anything that can be drunk. Therefore, the respondent contended that the Tribunal should do full justice to both versions of the Act and give to the word "beverage" the full meaning that it can bear. Furthermore, the respondent argued that Perrier water has been through a process of manufacturing and is not natural.

Held: *The appeal is dismissed. From the examination of section 1, Part V, Schedule III to the Act, the Tribunal concludes that the beverages listed in paragraphs 1(a), (b) and (d) are all beverages that require a certain degree of preparation and that, therefore, the context of the Act indicates that the beverages contemplated by paragraph 1(c) would as well be prepared beverages. That view is reinforced by the association of the word "carbonated" with the word "beverage." The*

word "carbonated" implies action or process through which carbon dioxide is added. If water is submitted to a process that adds carbon dioxide in such a way as to increase the volume of that gas dissolved in the water beyond the concentration level of carbon dioxide, found in nature, water becomes a "carbonated beverage" or "une boisson gazeuse." In this case, the evidence showed that the final product found in the Perrier bottle is the result of the separate sourcing and processing of carbon dioxide that is then combined with unfiltered source water in a bottling operation. The carbon dioxide content of bottled Perrier water is greater than would ever have been found at the head spring under natural conditions. The water was purposefully carbonated and the purposeful addition of carbon dioxide made the resulting product a carbonated beverage and hence taxable.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: June 27 and 28, 1990
Date of Decision: November 9, 1990

Tribunal Members: Robert J. Bertrand, Q.C., Presiding Member
Arthur B. Trudeau, Member
Charles A. Gracey, Member

Clerk of the Tribunal: Janet Rumball

Appearances: T.A. Sweeney and
Ian V. MacInnis, for the appellant
Alain Préfontaine, for the respondent
Paul Dagenais-Pérusse, for the intervenant

Cases Cited: *Rex v. Rouse* [1936] 4 D.L.R. 797 (Ont. C.A.); *Slaight Communications Inc. v. Davidson*, (1989) 1 S.C.R. 1038.

Statute Cited: Excise Tax Act, R.S.C., 1985, c. E-15, ss. 50, 51 and 1, Part V, Schedule III.

Dictionaries Cited: Le Grand Dictionnaire encyclopédique Larousse, Librairie Larousse, Paris; Le Grand Robert de la langue française, 2nd Edition, Le Robert, Paris, 1989; Webster's Third New International Dictionary, Merriam-Webster Inc., Springfield, 1966; Collins Dictionary of the English Language, Collins, London and Glasgow; Funk and Wagnalls New Standard Dictionary of the English Language, New York, 1963; The Oxford English Dictionary, 2nd Edition, 1989.

Memoranda Cited: Excise News, May 23, 1985; Excise Communiqué 116/T2, January 1987.

Appeal No. 3030

**GRAND SPECIALTIES LTD. and
THE PERRIER GROUP OF CANADA INC.** **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

and

OFFICE GÉNÉRAL DES EAUX MINÉRALES LIMITÉE **Intervenant**

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
ARTHUR B. TRUDEAU, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal pursuant to section 81.19 of the *Excise Tax Act* (the Act) by Grand Specialties Ltd. and The Perrier Group of Canada Inc. (the appellant) from a decision of the Minister of National Revenue (the Minister), dated May 3, 1988, in which the Minister determined that Perrier water, a carbonated mineral water, falls within the category of goods specifically excluded from the exemption found in section 1, Part V, Schedule III to the Act for "Food and drink for human consumption ... " and, therefore, is subject to federal sales tax.

The appellant seeks a declaration that Perrier water is exempt from the sales tax imposed by section 50 of the Act and an order that a refund of taxes paid be made. The intervenant supports the position of the appellant.

THE FACTS

The appellant imports, distributes and sells Perrier water in Canada. By Notice of Determination TORC-57342, dated November 4, 1987, the Minister assessed the appellant for \$1,077,209.43 on account of sales tax upon the importation of Perrier water by the appellant. The latter served on the Minister a notice of objection to the determination. By notice of decision dated May 3, 1988, the Minister disallowed the appellant's objection and confirmed the determination for the following reasons:

Section 1 of Part V of Schedule III to the Excise Tax Act exempts all food and drink for human consumption other than " ... (c) carbonated beverages and goods for use in the preparation of carbonated beverages. ... "

The expression "carbonated beverages" is interpreted to include any beverage that contains carbon dioxide whether naturally or artificially.

As Perrier is [a] carbonated mineral water marketed as a beverage, it falls within the category of goods specifically excluded from exemption.

On July 21, 1988, an appeal was filed with the Tariff Board from the decision of the Minister. The appeal was filed in the name of Grand Specialties Ltd. and The Perrier Group of Canada Inc. The two companies are wholly owned subsidiaries of Source Perrier SA in France. It appears that sometimes the importer was Grand Specialties Ltd. and in other cases, The Perrier Group of Canada Inc. Grand Specialties Ltd. is claiming \$486,811.26 of the total amount of \$1,077,209.43 and the balance of \$590,398.17 is claimed by The Perrier Group of Canada Inc..

The Minister chose to issue the aforementioned notice of determination in the name of Grand Specialties Ltd. only, ignoring The Perrier Group of Canada Inc. A notice of objection was filed in the name of each company. The Minister's notice of decision under appeal mentions both companies. Consequently, it appears that it would be appropriate for the Tribunal to deal with the appeal in the same manner as the Minister did, i.e., in the name of both companies, keeping in mind that the total amount sought by the companies is \$1,077,209.43.

Although the appeal was originally commenced before the Tariff Board, it is taken up and continued by the Tribunal in accordance with section 60 of the *Canadian International Trade Tribunal Act*.¹

Evidence for the appellant was presented by Mr. Duncan Finlayson, a civil engineer specialized in ground water, water resources, water engineering and geotechnics. He became familiar with the hydrology and chemistry of "Source Perrier" when he was retained by Perrier U.K. Limited. He described the history and hydrology of the source.

The "source," which is located at Vergèze in the South of France, involves a large geological formation consisting of two main parts. Surrounding the area are hills of limestone rock that slope toward a plain in which is located the "Source Perrier." Rainfall percolates through these hills and collects in the plain. The plain itself consists of a large siliceous sand aquifer some 40 m deep and is overlaid with a cap of clay about 5 m thick. The weight of this clay overburden bearing down upon the water laden sand bed and the slope of the surrounding terrain explains the artesian character of the source.

The second feature of the source area is that below the water laden sand bed is a large formation of carbonaceous rock that is heated by the heat convected upward, through faults and fractures, from the earth's mantle. This heat is sufficient to cause the release of gaseous carbon dioxide (CO₂) from the rock formation. This CO₂ is forced upward into the sand aquifer bed through faults and fissures in the rock. The witness testified that at a depth of 40 m, more or less, the pressure would be such as to permit the dissolving of 3.5 volumes of CO₂ into 1 volume of water. As this naturally

1. S.C. 1988, c. 56.

carbonated water rises closer to the surface, the pressure of overburden is lessened and the ratio of absorbed CO₂ to water declines. At the surface, the amount of dissolved CO₂ in the water is sharply reduced and, according to the witness, left exposed to the atmosphere, almost all the dissolved CO₂ would escape.

When the area known as the "Source Perrier" was first commercialized, the practice was to bury large cylinders in the sand to trap escaping CO₂ and to recombine it with water under pressure to the desired concentration. More recently, as the area has been further developed, drill holes have been sunk deep into the rock formation and CO₂ has been piped off directly to be added under pressure to the water that is sourced from the sand bed. Today, the CO₂ is not recombined with water, as was the case in the past, but is sourced from the rock formation below the aquifer and added to the water in a bottling operation at the surface. The gas that comes from the deep bore holes does contain some water, but this water is discarded and not bottled. Most of the water that is bottled comes from the sand bed. The gas contains traces of hydrocarbons that are filtered out before the CO₂ is combined with source water to create the final product. The resulting bottled water reproduces the condition of the water as it would exist in the natural state. That is to say the bottled water duplicates the volume of dissolved CO₂ that existed in the water, in its natural state, at a depth of approximately 40 m. Because the CO₂ is now intercepted directly from the rock formation, there is some doubt that the water, at 40 m deep, now contains that great a volume of CO₂.

Questioned by the Tribunal about the level of carbonation obtained in a bottle of Perrier water after the bottling process, the witness replied that the actual ratio of 3.5 volumes of carbon dioxide to 1 volume of water corresponds to the saturation level in the "Source Perrier" at a depth of 40 m. At this stage in the spring's history, this is not the level that would be found in the spring because of the separate extraction of the CO₂. The bottling process combines the water and the CO₂ to the level of carbon dioxide content that it would carry under natural conditions when saturated.

On being further questioned whether the contents of CO₂ vary between the bottom and the top of the sand layer from which the water is drawn, the witness explained that there is a difference between the situation now and in historic time. The situation now is that, because the carbon dioxide has been intercepted by the deep bore hole system before it gets to the water, the amount of CO₂ that enters the sand bed is now quite small and the CO₂ is no longer at saturation level in that water. In its natural state, the artesian water at the surface would contain about 1.4 volumes of CO₂ to 1 volume of water. The witness estimated the CO₂ content of the water near the surface to be about 15 mg/L compared to about 6,500 mg in the actual bottled Perrier water. Consequently, if the water were bottled coming out of the artesian well, it would end with a very low proportion of CO₂. The witness added that most waters would have carbon dioxide at a level similar to 15 mg/L.

The witness stated that the gas incorporated in Perrier water was 99.7 percent CO₂ and that the total fraction of impurities removed from the gas by filtration amounted to 0.001 percent. He further added that the Perrier bottle is designed to be safe within accepted standards for the 3.5 volumes of CO₂ per volume of water.

Mr. Duncan K. Smith, a biochemist employed at Ortech International (formerly Ontario Research Foundation), also testified for the appellant. He has been employed there for approximately 34 years. The witness submitted a lexicon of terms entitled Technical Glossary and a report entitled

Perrier Naturally Sparkling Mineral Water. The witness was asked to look at the carbonation levels of tap water and of various bottled waters. The test waters chosen were Perrier Naturally Sparkling Mineral Water, Apollinaris Naturally Sparkling Mineral Water, Canada Dry Club Soda, Crystal Springs Natural Spring Water, Vittel Natural Spring Water, Evian Natural Spring Water, Volvic Natural Spring Water and Mississauga tap water.

The data presented in his report show that ordinary tap water (Mississauga municipal water) and a variety of bottled waters including "still" and "sparkling" natural waters contain various levels of total carbonation including free carbon dioxide. The amount of free carbon dioxide found when measured at room temperature depends on the pH of the water and the levels of carbonation present at the source. Levels for carbon dioxide observed ranged from approximately 8 mg/L of CO₂ for Mississauga tap water; approximately 45 mg/L for some "still" natural spring waters to more than 2,500 mg/L for sparkling mineral waters.

The witness said that the term "(to) carbonate" means to infuse or impregnate with carbon dioxide. He explained that the values found for Perrier water and the other sparkling waters, including Club Soda, are minimum values since there is an immediate loss of CO₂ to the atmosphere on opening the samples at room temperature. In cross-examination, the witness admitted that, since the testing was done on an open bottle at room temperature and that there was an ongoing release of CO₂ to the atmosphere as he was performing the tests, these results do not reflect what is in the bottle with the cap on. On being asked if Perrier water is carbonated within the meaning that he gives to the expression, the witness replied that Perrier water has been carbonated with carbon dioxide. The witness further stated that 3.5 volumes of carbon dioxide to 1 volume of water is not the maximum amount of carbon dioxide that can be put into water.

Mr. Paul Dagenais-Pérusse, a physician, is President of the intervenant, *Office Général des eaux minérales Limitée*, a company that bottles and markets mineral water under the brand name "Saint-Justin." He testified that no more than 3.5 volumes of carbon dioxide can be put in a bottle of glass because it might explode. He further testified that when the sales tax exemption on carbonated beverages and goods for use in the preparation of carbonated beverages was repealed in 1985, Revenue Canada issued an Excise News bulletin on May 23, 1985, that listed, in Appendix A, examples of taxable items in the soft drink industry. Among them were carbonated beverages and carbonated water, respectively called "*boissons gazeuses*" and "*eaux gazeuses*" in the French version of the Communiqué. The witness submitted excerpts from the *Lexique des boissons gazeuses* published by *l'Office de la langue française* in 1980 to demonstrate that the expression "*eaux gazeuses*" is inaccurate and that "*boissons gazeuses*" does not refer to water, a natural product, carbonated either naturally or artificially, but refers to a prepared beverage.

The witness also referred to Communiqué 116-2/TI issued by Revenue Canada in January 1987 to update and clarify the instructions concerning established and determined values on soft drinks. He stated that Perrier water does not fit within any of the categories listed in that communiqué.

Mr. K. Anwer Mehkeri, who holds a M.Sc. in Organic Chemistry, testified for the respondent. From 1971 to 1987, he was Chief, Scientific and Laboratory Services, Division of the Product Safety Branch of Consumer Affairs Bureau of Consumer and Corporate Affairs Canada. Then he became

Special Advisor to the Consumers Standards and Regulations with the same Bureau and, since 1988, he has been a consultant to both Coca-Cola Canada Limited and Consumers Association of Canada. He testified that he was asked by the Laboratory and Scientific Services Directorate of Revenue Canada, Customs and Excise, to test three products and to establish the level of carbonation present in the bottles. These products were Coca-Cola, Canada Dry Ginger Ale and Perrier spring water. He tested five sample elements of 750 mL of each product, using the Zahm Piercing Device Method. This method is used by all soft drink industries across North America. The instrument used for testing has two gauges: a pressure gauge and a temperature gauge.

The witness produced a "Certificate of Analysis" on which were reported the results found: for Coca-Cola, an average of about 3.7 volumes of gas, for Canada Dry, about 3.9 volumes and for Perrier water, about 3.8 volumes.

THE ISSUE

The issue in this appeal is whether Perrier water, a carbonated mineral water, is a "carbonated beverage" within the meaning of paragraph 1(c), Part V, Schedule III to the Act, and is thereby subject to tax pursuant to section 50 of the Act.

THE LEGISLATION

The statutory provision relevant to this appeal is as follows:

Excise Tax Act²

SCHEDULE III PART V

FOODSTUFFS

1. Food and drink for human consumption (including sweetening agents, seasonings and other ingredients to be mixed with or used in the preparation of the food and drink), other than

- (a) wine, spirits, beer, malt liquor and other alcoholic beverages;*
- (b) non-alcoholic malt beverages;*
- (c) carbonated beverages and goods for use in the preparation of carbonated beverages;*
- (d) non-carbonated fruit juice beverages and fruit flavoured beverages, other than milk-based beverages, containing less than twenty-five per cent by volume of*
 - (i) a natural fruit juice or combination of natural fruit juices, or*
 - (ii) a natural fruit juice or combination of natural fruit juices that have been reconstituted into the original state,*

2. R.S.C., 1985, c. E-15 as amended by R.S.C., 1985, c. 7 (2nd Supp.), assented to on March 4, 1986. The amendment came into force on July 1, 1985.

and goods that, when added to water, produce a beverage described in this paragraph;

...

THE ARGUMENTS

Essentially, the appellant submitted that Perrier water is not a "beverage" within the ordinary meaning of that term. Based on dictionary definitions, the appellant argued that the ordinary meaning of the word "beverage" includes prepared drinks or liquids, but expressly excludes water.

In the appellant's view, the words in a statute must not be read in isolation, but should be read in the context of a statute as a whole to ascertain their intended meaning. Therefore, regard should be had to the closing words of paragraph 1(d), Part V, Schedule III to the Act, that read as follows: "... goods ... when added to water, produce a beverage...." The reference to the term "water" in contradistinction to the term "beverage" clearly implies that water, by itself, is not a "beverage." Accordingly, the word "beverage" as it is used in paragraph 1(c), Part V, Schedule III to the Act, should be similarly construed to exclude water such as Perrier water.

The appellant then moved to a consideration of the intent of the legislators in enacting section 1, Part V, Schedule III, and argued that an examination of that section gives rise to the clear inference that Parliament intended a "beverage" to mean a manufactured or prepared drink, but not a product such as Perrier water that occurs in the ordinary way of nature. In the appellant's view, the common aspect to all the various beverages enumerated in paragraphs (a), (b) and (d) of section 1, Part V, is that they are artificially produced or prepared drinks. Consequently, the same meaning of "beverage" should be ascribed to the term in paragraph 1(c).

Furthermore, the appellant argued that the meaning of a word is influenced by the words with which it is associated. The appellant noted that paragraph 1(c), Part V, Schedule III, speaks of "... goods for use in the preparation of carbonated beverages." These words clearly imply that a "beverage" is a manufactured product. Thus, the first reference to "carbonated beverages" in this paragraph should also be restricted to mean only manufactured carbonated beverages. As Perrier water is composed of natural elements, it does not constitute a manufactured product and, therefore, is not a "beverage" for the purpose of paragraph 1(c).

The appellant cited cases where the word "beverage" has been judicially considered. In the case *Rex v. Rouse*,³ the Ontario Court of Appeal held that "beverage" means a manufactured product or prepared drink, but not a drink such as milk that comes in the ordinary way of nature. Consequently, as Perrier water occurs in nature and is merely extracted from an underground source and bottled, it does not constitute a "beverage."

In the appellant's view, Parliament could easily have been specific and enumerated "carbonated water" as a taxable good in the Act, if it had been the true intention. The failure to enumerate "carbonated water" as a separate taxable item gives rise to an inference that it is not taxable under the

3. [1936] 4 D.L.R. 797 (Ont. C.A.).

Act. Relying on the case *Johns-Manville Canada Inc. v. The Queen*,⁴ the appellant contended that any ambiguity resulting from the lack of explicitness in a statute should be resolved in favor of the taxpayer.

The alternative position of the appellant, in the event the Tribunal finds that Perrier water is a beverage, is that Perrier water is not carbonated within the meaning of the term "carbonated beverage." Carbonated beverage is restricted to mean artificially carbonated beverages and would, therefore, not include naturally carbonated water such as Perrier water. According to the appellant, at the same time that "carbonated beverages" were made subject to tax, paragraph 1(d), Part V, Schedule III, was enacted. The intent of that paragraph is to subject to tax fruit juice beverages and fruit flavoured beverages that contain less than 25 percent by volume of natural juices. The 25 percent threshold, argued the appellant, indicates a drink that is manufactured and that a drink which comprises substantially natural fruit juice is not subject to tax under the Act. As paragraphs 1(c) and (d) were enacted simultaneously and the clear intent of paragraph 1(d) is to subject to tax only fruit juices that are not essentially natural fruit juices, the same intent can be ascribed to paragraph 1(c) to the effect that naturally carbonated water such as Perrier water was not intended to be subject to tax under the Act.

Finally, the appellant argued that Parliament is presumed to act reasonably and that a court should avoid assigning a meaning to a word that would result in an absurd result. The ambit of paragraph 1(c), Part V, Schedule III, is restricted to mean carbonated beverages that are manufactured and does not include water that contains a measure of carbon dioxide by natural processes. If this were so, then ordinary tap water and bottled "still" water that contain some measure of carbonation would be subject to tax under the Act. This would be an absurd and unintended result.

The respondent submitted that the Tribunal must look at both versions of the Act to determine what was the intent of Parliament in enacting paragraph 1(c), Part V, Schedule III to the Act. Turning to the English version first, the respondent argued that the dictionary definitions of the word "beverage" are not consistent and do not assist in the resolution of this issue. In fact, contrary to the appellant's position, The Shorter Oxford English Dictionary does not exclude water from the definition of "beverage." Rather, it defines beverage as a "drink." Clearly this definition would include Perrier water as a beverage.

The respondent argued that the evidence does not support the appellant's argument to the effect that Perrier water is not a beverage because it is natural. In the respondent's view, the evidence established that Perrier water is the result of the extraction of two different sub-terrain products, i.e., the water and the carbon dioxide. The gas is filtered and what is filtered out are traces of gas of hydrocarbons that amount to approximately 0.001 percent of the total volume of gas. Therefore, what one finds in a bottle does not correspond to what is found in the ground. There has been considerable manipulation of this product; the gas is extracted separately, taken away and reinserted at a constant degree, 3.5 volumes, which does not exist in nature. This is enough to say that Perrier water has been through a process of manufacturing and, therefore, is not natural.

Turning to the French version of the Act, the respondent noted that the word "*boisson*" is used constantly in section 1, Part V, contrary to the English version that uses the words "drink" and

4. [1985] 2 S.C.R. 46.

"beverage." Based on dictionary definitions of the word "*boisson*," the respondent submitted that it is a generic term that includes anything that can be drunk. Therefore, the ordinary meaning of the word "*boisson*" would include Perrier water.

Consequently, the respondent argued that the Tribunal should do full justice to both versions of the Act and give to the word "beverage" the full meaning that it can bear instead of preferring the more restrictive definitions of beverage that the English version is capable of producing. For that proposition, the respondent relied on the decision *Nitrochem Inc. v. Minister of National Revenue for Customs and Excise*⁵ where the Federal Court of Appeal stated that "... a judge's responsibility is not to seek some primary instance of ordinary usage in one language to which the meaning in the other language must be made to conform, but rather to try to grasp the whole meaning in both languages."

The respondent invited the Tribunal to consider the term "beverage" in its ordinary meaning and concluded, from looking at dictionary definitions, that the English version is capable of a more restrictive meaning, but is also capable of the same broad meaning of the French version, which should prevail.

FINDING OF THE TRIBUNAL

Goods that are imported or sold in Canada are subject to sales tax by reason of section 50 of the Act. Subsection 51(1) of the Act provides an exemption from sales tax in respect of goods mentioned in Schedule III to the Act. Section 1, Part V, Schedule III to the Act, exempts "Food and drink for human consumption" from sales tax. On July 1, 1985, section 1, Part V, Schedule III, was amended by the enactment of paragraph 1(c), the effect of which was to repeal the sales tax exemption for "carbonated beverages and goods for use in the preparation of carbonated beverages."

There is no dispute between the parties that there is carbon dioxide in Perrier water. The only question in issue is whether Perrier water is a beverage within the meaning of paragraph 1(c), Part V, Schedule III to the Act.

In the Tribunal's view, there are several reasons why the appellant's position cannot be adopted. First, the word "*boisson*" used in the French version of paragraph 1(c), Part V, as the equivalent of the English word "beverage" appears to mean any liquid that can be drunk, including water. The English word "beverage" arguably refers only to prepared drinks or liquids but expressly excludes water. There is therefore a need to reconcile the two versions, both equally authoritative, of paragraph 1(c), Part V, Schedule III.

The principle to be applied in reconciling an apparent conflict between two versions has been set out by Mr. Justice Lamer in the decision of the Supreme Court of Canada in *Slaight Communications Inc. v. Davidson*⁶ as follows:

First of all, therefore, these two versions have to be reconciled if possible. To do this, an attempt must be made to get from the two versions of the provision the

5. 53 N.R. 394, at p. 398.

6. [1989] 1 S.C.R. 1038, at p. 1071.

meaning common to them both and ascertain whether this appears to be consistent with the purpose and general scheme of the Code. (The statute in this instance was the Canada Labour Code.)

It is elementary that the grammatical and ordinary sense of the words is to be adhered to. In Le Grand Dictionnaire encyclopédique Larousse,⁷ "boisson" is defined in its primary sense as follows:

1. Tout liquide que l'on boit pour se désaltérer ou se rafraîchir : boisson glacée. Boisson gazeuse, alcoolisée.

1. Any liquid drunk to quench thirst or feel refreshed: iced drink. Carbonated or alcoholic drink. (Translation)

The same definition further lists the different "boissons" that exist, including a full range of natural, artificial and carbonated mineral waters. The definition of "boisson" contained in Le Grand Robert de la langue française⁸ is to the same effect:

1. Liquide propre à être bu ou destiné à être bu... Principales boissons naturelles Eau (eau naturelle, gazeuse, minérale), lait.

1. Liquid used for dinking ... Main natural drinks. Water (natural, carbonated, mineral water), milk. (Translation)

It appears clearly on the face of the French version that "boisson" is a generic term that includes carbonated waters such as Perrier water. It should be noted that the word "boisson" is used in the opening words of section 1, Part V, Schedule III, to describe the general exemption: "1. *Aliments et boissons destinés à la consommation humaine.*" The word here is used as the equivalent of the English word "drink." It is also used in paragraphs 1(a) to (d) as the equivalent of the English word "beverage." Turning now to the meaning of the word "beverage" as used in the English version of paragraph 1(c), it appears that conflicting definitions can be found in the various English dictionaries:

beverage 1: liquid for drinking; esp: such liquid other than water (as tea, milk, fruit juice, beer) usu. prepared (as by flavoring, heating, admixing) before being consumed⁹

beverage: any drink, usually other than water.¹⁰

beverage 1. Drink, liquor for drinking; esp. a liquor which constitutes a common article of consumption.¹¹

7. Librairie Larousse, Paris.

8. 2nd Edition, Le Robert, Paris, 1989.

9. Webster's Third New International Dictionary, Merriam-Webster Inc., Springfield, 1966.

10. Collins Dictionary of the English Language, Collins, London & Glasgow.

11. The Oxford English Dictionary, 2nd Edition, Clarendon Press, Oxford, 1989.

*beverage: 1. Drink; that which is drunk; especially, a pleasant or refreshing drink or a habitual one;*¹²

As can be seen from these definitions and the many definitions submitted in evidence, the definitions of the word "beverage" are not consistent. Some definitions expressly exclude "water," others say "usually other than water." Some definitions add that it is a liquid usually prepared before being consumed, others generally define it as a "drink" or a "liquid for drinking."

In the Tribunal's view, the several authoritative English dictionaries, though not unanimous, create a strong impression that water is not ordinarily considered a beverage. The French word "*boisson*" makes no such distinction. Therefore, the Tribunal faces the task of trying to reconcile the broader meaning of the French word "*boisson*" with the more restrictive meaning of the English word "beverage."

As noted by the appellant, to ascertain the intended meaning of the word "beverage," regard should be had to the context of the statute. Paragraph 1(c), Part V, excludes from the general exemption provided for drinks for human consumption not only the "carbonated beverages," but also the "goods for use in the preparation of carbonated beverages." In addition, paragraph 1(d), Part V, refers to "... goods that, when added to water, produce a beverage described in this paragraph."

From the examination of section 1, Part V, Schedule III, the Tribunal concludes that the beverages that are listed in paragraphs 1(a), (b) and (d) are all beverages that require a certain degree of preparation and that, therefore, the context indicates that the beverages contemplated by paragraph 1(c) would as well be prepared beverages. That view is reinforced by the association of the word "carbonated" with the word "beverage." Words in the Act must not be read in isolation; rather, their meaning is influenced by the other words with which they are associated. The word "carbonated" implies action or process through which CO₂ is added. The Tribunal is of the view that if water is submitted to a process that adds CO₂ in such a way as to increase the volume of that gas dissolved in the water beyond the concentration level of carbon dioxide found in nature at surface level, water becomes a "carbonated beverage" or "*boisson gazeuse*."

Second, the appellant's contention that Perrier water is a natural product that is not prepared is not supported by the evidence. On the contrary, the evidence shows that the final product found in the Perrier bottle is the result of the separate sourcing and processing of CO₂ that is then combined with unfiltered source water in a bottling operation.

As explained by Mr. Finlayson, Perrier water cannot be bottled directly from the spring because carbonation is too low by the time the water reaches the surface. The present practice is to source the water and the gas separately and to combine the two components, under pressure, after the gas has been filtered. It was put in evidence that the pressure under which a ratio of 3.5 volumes of gas is combined with 1 volume of water reproduces the conditions that existed at about 40 m deep in the sand aquifer in its natural state. At this stage of the source's history, however, the fact that CO₂ is drawn off before it reaches the water and the rate of water withdrawal means that this level of saturation no longer exists. Thus the bottling process more exactly recreates the level of CO₂ saturation that would have existed in the natural state. Interestingly, the Tribunal notes that the

12. Funk and Wagnalls New Standard Dictionary of the English Language, New York, 1963.

quantity of CO₂ contained in Perrier water is similar to the quantity found in some "soft drinks" described in evidence, such as Coca-Cola and Ginger Ale.

In sum, the evidence showed that the carbon dioxide content of bottled Perrier water is greater than would ever have been found at the head spring under natural conditions. This higher level is achieved by combining CO₂ under pressure with the source water, and the resulting product in no way resembles what exists in the natural state. It seems to the Tribunal that Perrier water falls precisely within the range of "carbonated beverages" that Parliament had in mind when the Act was amended in 1985, i.e., liquids for drinking that have been through a certain process or preparation during which a given quantity of carbon dioxide was added. In the Tribunal's view, that added quantity of carbon dioxide constitutes the element that distinguishes the carbonated beverages contemplated by paragraph 1(c) from the ordinary tap waters or bottled "still" waters that contain naturally some measure of carbonation.

The appellant urged the Tribunal to make a distinction between artificially and naturally carbonated beverages should it conclude that Perrier water is a beverage. The Tribunal believes that the word "carbonated" used in the context of the Act is a participle, which is to say "a verbal adjective qualifying a noun." The meaning the Tribunal has taken therefore is that CO₂ was combined with water in a deliberate process. One cannot dispute the evidence that some still waters and some tap waters contain low levels of dissolved CO₂ but to describe such goods as carbonated would be absurd. For example, traces of "fluorine" may exist in some waters in natural state but the term fluorinated water is reserved for water to which fluorine has been purposefully added. If one were to state that a water is "naturally fluorinated" that would convey the meaning that the water contained fluorine in its natural state. On the evidence, Perrier water is both naturally carbonated in its original state and deliberately carbonated by mechanical processes. Whether the CO₂ used to carbonate the water was natural or manufactured is of no consequence. The water was purposefully carbonated and the purposeful addition of CO₂ made the resulting product a beverage and hence taxable.

For all these reasons, the Tribunal concludes that Perrier water is a carbonated beverage within the meaning of paragraph 1(c), Part V, Schedule III to the Act, and is, therefore, subject to the federal sales tax imposed by section 50 of the Act.

CONCLUSION

Accordingly, the appeal should be dismissed.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.

Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau

Member

Charles A. Gracey

Charles A. Gracey

Member