

Ottawa, Tuesday, August 11, 1992

**Appeal No. AP-91-114**

IN THE MATTER OF an appeal heard on June 3, 1992,  
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,  
c. E-15, as amended;

AND IN THE MATTER OF decisions of the Minister of  
National Revenue dated October 26, 1990, relating to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**THE CORPORATION OF THE CITY OF HAMILTON**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part.

Desmond Hallissey  
Desmond Hallissey  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-91-114**

**THE CORPORATION OF THE CITY OF HAMILTON**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant, a municipal corporation, is the owner and operator of Copps Coliseum and Hamilton Place through the Hamilton Entertainment and Convention Facilities Inc. The issue in this appeal is whether different pamphlets and brochures, consisting of calendars of events, internal house programs as well as cardboard wall posters, are printed matter made available to the general public without charge for the promotion of tourism, in which case it is entitled to a refund of sales tax pursuant to section 68.29 of the Excise Tax Act.*

**HELD:** *The appeal is allowed in part. The Tribunal recognizes that Copps Coliseum and Hamilton Place are used for activities that promote tourism as well as for community activities and finds, therefore, that the materials in issue promoting activities that are not purely community oriented held at these locations were used in the promotion of tourism pursuant to section 68.29 of the Excise Tax Act. The Tribunal is also convinced that the promotional materials sent to many organizations involved in tourism were also made available to the general public without charge. The Tribunal finally finds that subparagraph 3(b)(vii), Part III, Schedule III to the Excise Tax Act does not preclude sales tax refunds related to some of the printed matter in issue, namely, timetables. The goods listed in Schedule III are indeed exempted from sales tax pursuant to section 51 of the Excise Tax Act. According to the last paragraph of section 3, Part III, Schedule III, timetables are generally excluded from the exemption and, thus, sales tax must be paid with respect to these goods. However, nothing precludes a refund of sales tax for timetables that are printed matter used in the promotion of tourism if they fall within the scope of section 68.29 of the Excise Tax Act.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: June 3, 1992*

*Date of Decision: August 11, 1992*

*Tribunal Members: Desmond Hallissey, Presiding Member  
Charles A. Gracey, Member  
Robert C. Coates, Q.C., Member*

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Clark V. Craig, for the appellant  
Geoffrey S. Lester, for the respondent*

**Appeal No. AP-91-114**

**THE CORPORATION OF THE CITY OF HAMILTON**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: DESMOND HALLISSEY, Presiding Member  
CHARLES A. GRACEY, Member  
ROBERT C. COATES, Q.C., Member

**REASONS FOR DECISION**

This is an appeal pursuant to section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) that follows a decision rendered by the Minister of National Revenue.

The appellant, a municipal corporation, is the owner and operator of Copps Coliseum and Hamilton Place through the Hamilton Entertainment and Convention Facilities Inc. Hamilton Place is primarily a theatre in which there are artistic performances of various types. Copps Coliseum is a facility used primarily for ice hockey and various types of trade shows. It is also used, on occasion, for other events such as rock concerts. Both Copps Coliseum and Hamilton Place aim to attract patrons from a large area outside of the city. To this end, they distribute posters and flyers advertising upcoming events and distribute these to subscribers, hotels, chambers of commerce, libraries, restaurants and through the regional Tourism and Development Centre.

The appellant filed four sales tax refund claims with respect to the purchase of the above-mentioned printing matter for the amount of \$45,981.21 pursuant to section 68.29 of the Act. Its claims were denied, hence the appeal before the Tribunal.

At the hearing, the appellant no longer contested the respondent's decision with respect to some materials for which it claimed refunds of sales tax. Counsel for the appellant also admitted that the refund application for the period from January 1 to December 31, 1986, is statute barred. At issue in this appeal is whether different pamphlets and brochures, consisting of calendars of events, internal house programs as well as cardboard wall posters, are printed matter made available to the general public without charge for the promotion of tourism, in which case the appellant would be entitled to a refund of sales tax pursuant to section 68.29 of the Act.

Counsel for the appellant argued that the primary purpose of the goods in issue is to attract persons and organizations to Hamilton. This constitutes the promotion of tourism as

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1. R.S.C., 1985, c. E-15, as amended.

required by the statute. Counsel relied upon the decision of the Tribunal in *La municipalité régionale de comté de Bécancour and The Minister of National Revenue*.<sup>2</sup> According to that decision, counsel submitted, a person may be in his own regional municipality and fall within the definition of the word "tourist." Counsel also relied upon the arguments raised by the respondent in that appeal, i.e. that a tourist document contains pictures and is intended to be distributed to tourist booths outside the region. He argued that the materials in issue meet these conditions. Counsel added that the materials upon which a refund is claimed are distributed not only in the Hamilton area, but also to organizations such as hotels, automobile associations, chambers of commerce and touring agencies listed in Exhibit A-1, which are involved in tourism. With respect to cardboard posters, counsel argued that they are available to the public within the meaning of section 68.29 of the Act since they can be viewed by the public and because nothing in that provision requires that they be distributed to the public.

Counsel for the respondent argued that the goods in issue are not designed to promote tourism. Counsel maintained that tourism entails travelling away from one's normal place of residence for pleasure or culture, visiting several places as objects of interest, scenery or the like according to the definition of the word "tourist" given by The Shorter Oxford English Dictionary<sup>3</sup> as accepted, he said, in the Ontario Court of Appeal decision in *Re Lord's Day Alliance of Canada v. Regional Municipality of Peel et al.*<sup>4</sup> The material in issue, counsel continued, is not aimed specifically at people from out of town. Besides, tourism implies the notion of visiting a number of places. The posters and other material, in essence, promote specific events and activities at particular locations rather than informing the public, as tourist literature would normally do. The materials are essentially commercial advertising designed to promote the appellant's own commercial enterprise at Hamilton Place and Copps Coliseum exclusively for its own benefit. Furthermore, not all the materials in issue are available to the general public; the internal house programs for the theatre are available only on a limited basis to theatre patrons, and the cardboard wall posters are generally not available to the public. In this regard, counsel insisted on the French version of section 68.29 of the Act which requires that the printed matter be "*distribués gratuitement au grand public*" ([Translation] distributed to the general public without charge). Counsel argued that the use of the word "*distribués*" in the French version means that a person must be actually capable of keeping the printed matter which, he said, is not the case with the cardboard posters that are affixed to a wall. The requirement that it be made available without charge also concurs with that interpretation. In the alternative, counsel submitted that some of the materials in issue are calendars and constitute, therefore, timetables or similar printed matter specifically excluded from the exemption provision in subparagraph 3(b)(vii), Part III, Schedule III to the Act.

The Tribunal is of the view that the meaning of the word "tourism" as used in section 68.29 of the Act is not as limited as contended by counsel for the respondent. To the contrary, section 68.29 must be given a large and liberal construction and interpretation to best ensure the attainment of its objectives in accordance with section 12 of the *Interpretation Act*.<sup>5</sup> The objective underlying section 68.29 is clearly to provide sales tax relief for public and commercial entities that promote tourism and, to a certain extent, is designed to support the tourist industry. The Tribunal finds that to accept the respondent's contention would ultimately lead to the adoption of the respondent's own judgment as to what constitutes tourism. It would

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2. Canadian International Trade Tribunal, Appeal No. AP-91-065, March 10, 1992.

3. Oxford, Clarendon Press, Third Edition, Volume II, p. 2334.

4. (1982), 135 D.L.R. (3d) 657, at 664.

5. R.S.C., 1985, c. I-21.

therefore limit the scope of section 68.29 contrary to what, in the Tribunal's view, was intended by Parliament. Moreover, tourism is not an objective concept, and one may be a tourist even if visiting other than cultural, historical or architectural sites. That being said, it is common knowledge that most modern cities, especially in North America, abound with tourism structures that broaden the scope of tourism. It is worth noting, in this regard, that a few paragraphs after citing the definition of "tourist" in *Regional Municipality of Peel*, the decision on which counsel for the respondent relied, MacKinnon J. stated "It is fairly easy to assume that 'exhibition halls' and 'convention centres' are essential to the development or maintenance of a tourist industry."<sup>6</sup> Moreover, the Tribunal adopts the words of Côté who states that "It is necessary to distinguish the meaning of a term from the things that may be included in its ambit."<sup>7</sup> Although buildings like Copps Coliseum and Hamilton Place serve community purposes, they also serve tourism purposes. The evidence established that they are basic elements of Hamilton tourism. For all these reasons, the Tribunal finds that, as established in evidence, materials promoting activities that are not purely community oriented held at these locations were used in the promotion of tourism pursuant to section 68.29 of the Act.

The Tribunal is also convinced that the printed materials in issue were made available to the general public without charge for the promotion of tourism. As established in evidence and shown by Exhibit A-1, many organizations involved in tourism appear on the mailing list of the printed materials. The Tribunal cannot imagine Parliament had intended such printed tourist literature to be distributed individually, as long as the materials and information that it contains are available to the general public, which is the case here since they are sent to hotels, automobile associations and touring agencies. For the same reasons, the Tribunal is satisfied that cardboard wall posters are made available to the general public without charge although the general public may not be able to take the cardboard posters home.

Finally, the Tribunal disagrees with counsel for the respondent as to the application of subparagraph 3(b)(vii), Part III, Schedule III to the Act. The goods listed in Schedule III are indeed exempted from sales tax pursuant to section 51 of the Act. According to the last paragraph of section 3, Part III, Schedule III, timetables are generally excluded from the exemption and thus sales tax must be paid with respect to these goods. However, once the exclusion from the exemption operates, nothing precludes the refund of sales tax pursuant to section 68.29 of the Act for timetables that are printed matter used in the promotion of tourism. The Tribunal also observes that section 14, Part III, Schedule III to the Act, which was added in 1986,<sup>8</sup> allows a general exemption for "[i]mported printed matter" and that there is no restriction or exclusion with respect to timetables. Given that this provision duplicates to a certain extent section 68.29 of the Act, it would simply be illogical that Parliament had excluded Canadian-made timetables aimed at tourism from the refund provision of section 68.29 while exempting the same goods when imported.

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6. *Supra*, footnote 4.

7. Pierre-André Côté. The Interpretation of Legislation in Canada. Cowansville, Quebec: Les Éditions Yvon Blais Inc., p. 203.

8. R.S.C., 1985, c. 42 (2nd Supp.), s. 13.

For the foregoing reasons, the appeal is allowed in part. The calendar of events, internal house programs and cardboard wall posters in issue in this appeal entitle the appellant to a refund of sales tax pursuant to section 68.29 of the Act.

Desmond Hallissey  
Desmond Hallissey  
Presiding Member

Charles A. Gracey  
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Member

Robert C. Coates, Q.C.  
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Member