

Ottawa, Monday, June 8, 1992

Appeal No. AP-91-181

IN THE MATTER OF an appeal heard on April 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 a decision from the Minister of
National Revenue dated August 12, 1991, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

VANCOUVER PUBLIC AQUARIUM ASSOCIATION

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-181

VANCOUVER PUBLIC AQUARIUM ASSOCIATION

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This appeal is filed under section 81.19 of the Excise Tax Act with respect to a decision issued on August 12, 1991, by the Minister of National Revenue. The issue is whether the appellant is entitled to a sales tax refund pursuant to paragraph 68.26(a) of the Excise Tax Act.

HELD: *The appeal is dismissed.*

Place of Hearing: Vancouver, British Columbia
Date of Hearing: April 3, 1992
Date of Decision: June 8, 1992

Tribunal Members: W. Roy Hines, Presiding Member
Kathleen E. Macmillan, Member
Sidney A. Fraleigh, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

Appearances: Werner H.G. Heinrich, for the appellant
John B. Edmond, for the respondent

Appeal No. AP-91-181

VANCOUVER PUBLIC AQUARIUM ASSOCIATION

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This appeal was filed under section 81.19 of the *Excise Tax Act*¹ (the Act).

The appellant erected a building to house a new exhibit called the "Arctic Canada Exhibit." It then filed an application claiming a refund of \$172,983 for federal sales tax paid on materials used in the construction of the new facilities. The respondent issued on December 28, 1990, a notice of determination disallowing the refund claim on the basis that the appellant did not qualify as "a school, university or other similar educational institution ..." under paragraph 68.26(a) of the Act. A notice of objection was served by the appellant on March 12, 1991. A notice of decision dated August 12, 1991, was issued by the respondent confirming the determination.

The issue in this appeal is whether the appellant qualifies as "a school, university or other similar educational institution ..." pursuant to paragraph 68.26(a) of the Act.

Dr. Gerry Staley, Associate Superintendent of Schools for the Vancouver School Board, appeared as a witness for the appellant. He testified that the Vancouver Public Aquarium Association (the Aquarium) is used for field educational experiences by students, that it is referred to in the school board's field studies resource book, that it tailors its educational programs to coincide with the provincial educational curriculum, and that people with teaching qualifications at the Aquarium consult with teachers in the school system to prepare educational material. Dr. Staley also testified that the Aquarium's staff teachers and "docents" (i.e. highly trained volunteers) work directly with school teachers and students and that the Aquarium offers a teacher training program. In addition, he noted that the whole focus of the Aquarium is on education and on helping youngsters understand the environment. During cross-examination, Dr. Staley stated that, in his view, the Aquarium is an educational institution which differs from other public museums or planetariums because it stresses education and stimulates the natural curiosity of children.

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

Mr. G. Douglas Hodgkinson, Executive Director of Assessment, Evaluation and Standards Division, Ministry of Education (the Ministry), Province of British Columbia (the Province), was the appellant's second witness. He described for the Tribunal the Year 2000 Program of the Ministry which, among many things, puts emphasis on the individual learner and moves away from a classroom-oriented prescribed curriculum. He noted that an integral part of the education philosophy is that education involves a very broad range of experiences and schools are given considerable latitude as to how they provide these experiences. He stated that the Aquarium fulfills a function in the educational program objectives of the Province and that the Ministry has provided the Aquarium with a \$25,000 non-statutory grant for a number of years. During cross-examination, this witness stated that there is nothing in the provincial legislation that describes the Aquarium as an educational institution and that while it provides educational opportunities and functions, it is not governed by the Province and is not a school under provincial legislation.

Mr. Richard Kool, Environmental Education Coordinator with the British Columbia Ministry of Environment, described the Ministry's efforts to put together an environmental education curriculum and the role of the Aquarium in providing the complex systems needed to carry out this program. In his view, the Aquarium is an educational institution, particularly because its programs are directly structured to relate to both the provincial school curriculum and the needs of the young people in Vancouver.

Ms. Nancy E. Baron, Head of Education and Extension Programs at the Aquarium, was the appellant's final witness. Ms. Baron told the Tribunal that the Aquarium was a self-supporting, non-profit organization and had, as part of its mandate, an educational program which fosters scientific programs in conjunction with aquatic life. Visitors to the Aquarium range between 800,000 and 1,000,000 persons per year, of which about 57,000 are students. She explained that the Aquarium has a core team of education staff with either teaching or biology degrees who are responsible for the training of some 300 volunteers and for developing and designing programs in collaboration with members of the Ministry and school boards. The staff also carries out research and prepares documents and manuals to assist teachers in taking their classes through the programs. She noted that the Aquarium received the outstanding award for educational programming from the American Association of Zoological Parks and Aquariums and its Canadian counterpart and many acknowledgements from B.C. science teachers.

Counsel for the appellant argued that while the Aquarium is not a formal educational institution in the sense that it is recognized by statute, it is regarded by all of the witnesses as an institution that fulfills an educational function which is becoming more important in the scholastic curriculum of the Province. Counsel for the respondent did not dispute that the Aquarium is an institution that has a strong educational component. Both counsels also agreed that the decision in this case must rest primarily on the interpretation of the word "similar" in the context of the legislation. In other words, is the Aquarium similar to a school or university?

Relying on the testimony of the witnesses and the exhibits, counsel for the appellant argued that the Aquarium is like a school or university. Public funds are involved. The Aquarium has qualified teaching staff, lecture halls, classrooms, laboratories, libraries and research facilities. Counsel argued that while each one of these elements by itself does not make an educational institution, taken together they have many of the same characteristics as a school or university. He argued that the word "similar" does not mean "the same as" or "identical to," but rather means bearing a resemblance to or possessing some of the characteristics of the item to which it refers. As such, in his view, the Aquarium is similar to a school or university and, in many respects, operates as one except in a formal sense.

Counsel for the respondent argued that the Aquarium is basically a public institution comparable to a museum with a strong educational component and that, while it need not be identical to a school or university to qualify, it must possess sufficient characteristics to be "similar." He referred to Memorandum ET 406² issued by the Department of National Revenue, Customs and Excise, which states that an educational institution means one " ... which is organized basically for teaching and which conducts regular classroom courses in preparation for all levels of education, issuing, at the end of the course, degrees, diplomas or certificates and which institution is recognized as an educational institution by a government department such as a provincial or territorial department of education." While counsel noted that this reflected the respondent's interpretation of the relevant provision of the Act, in his view, these are some of the appropriate criteria that an institution must meet in order to qualify as being similar to a school or university. In this regard, counsel suggested that the Aquarium more closely resembled a museum, some of which also have educational components, to the extent that it is open to the general public, charges an entrance fee and does not grant degrees, diplomas or certificates. Counsel noted that less than 10 percent of public visitors to the Aquarium were going for a narrow educational purpose and that if the Aquarium were an institution similar to a university or school, it would offer some type of diploma or certificate.

The Tribunal agrees with both counsels that this case turns on the interpretation of the word "similar" in the statute, and the Members have carefully examined the precedents brought to their attention in this regard. They concur with counsel for the appellant that a meaning focussing on the identification of like characteristics is a reasonable approach, and there is no question, in the Tribunal's view, that the Aquarium carries out some of the functions generally associated with a school or university. For these reasons, it can be said to have some like characteristics. However, the Tribunal also agrees with the respondent's counsel that the institution must have sufficient characteristics to make it similar and, in its view, the nature of the institution and its primary activities are directly relevant to any conclusions relating to its status.

The Tribunal heard considerable evidence relating to the mandate, functions and activities of the Aquarium and agrees that one of its principal goals is of an educational nature. However, in the Tribunal's view, this is not sufficient to qualify it as "a school, university or other similar educational institution" The Aquarium's general atmosphere appears to be significantly different from that of a school or educational institution and, indeed, the great majority of its visitors come to view exhibits rather than to participate in any type of formal or informal academic pursuit. As noted above, the Aquarium performs some of the functions that might be regarded as ancillary to a school or university and provides an important field resource and research facility for the more structured educational institutions contemplated by paragraph 68.26(a) of the Act. However, the Tribunal believes that the Aquarium resembles more closely a museum than an educational institution. Accordingly, the appellant cannot be considered as an educational institution similar to a school or university. Therefore, it is not entitled to the claimed refund.

2. Notice of Decision 90898RE, March 23, 1990.

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member