

Ottawa, Friday, August 15, 1997

Appeal No. AP-96-056

IN THE MATTER OF an appeal heard on January 17, 1997,
under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF decisions of the Minister of National
Revenue dated April 19 and June 7 and 21, 1996, with respect to a
notice of objection served under section 81.17 of the *Excise Tax
Act*.

BETWEEN

INFORMCO INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Lyle M. Russell
Lyle M. Russell
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-96-056

INFORMCO INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the *Excise Tax Act* from determinations of the Minister of National Revenue dated June 4 and 25, 1993, that disallowed the appellant's applications for refunds of federal sales tax paid in respect of sales of various insurance policy books and manuals.

HELD: The appeal is dismissed. Having reviewed the two available examples of publications described as policy books and considered the evidence, the Tribunal concludes that they contain advertising and are not used "solely" for educational or technical purposes, as they are used for commercial purposes as an adjunct to insurance policies. Furthermore, the Tribunal finds that one of the two examples provided contained information about the particular insurance company and the insurance products offered, which, in the Tribunal's view, constituted advertising.

The Tribunal physically examined the one available example of a publication described as a policy manual and is not persuaded, based on such an examination, that the publications in issue qualify for exemption under subsection 3(1), Part III, Schedule III to the *Excise Tax Act*. While the example provided contains some description about the various elements of the particular policies, it predominantly contains rate tables and information used in determining and identifying applicable rates. As such, the Tribunal is of the view that the publications are rate tables or similar printed matter and are, therefore, excluded from the exemption.

Having found that the sales of the publications are not exempt from federal sales tax, the Tribunal considered whether the appellant is the manufacturer or producer of the publications. The Tribunal finds that the appellant sells the publications manufactured by it to the insurance companies, as a vendor, and is not acting in the name of or for or on behalf of the insurance companies.

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 17, 1997
Date of Decision: August 15, 1997

Tribunal Members: Arthur B. Trudeau, Presiding Member
Lyle M. Russell, Member
Charles A. Gracey, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Margaret Fisher

Appearances: Paul E. Hawa, for the appellant
Janet Ozembloski, for the respondent

Appeal No. AP-96-056

INFORMCO INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
LYLE M. RUSSELL, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from determinations of the Minister of National Revenue dated June 4 and 25, 1993, that disallowed the appellant's applications for refunds of federal sales tax (FST) paid in respect of sales of various publications. At the hearing, counsel for the appellant conceded that, of the issues identified in the appellant's brief, the appellant was only appealing those determinations that disallowed the refunds of FST paid in respect of its sales of various publications described as insurance policy books and manuals.

Counsel for the appellant argued that the sales of the various insurance policy books and manuals were exempt from FST pursuant to subsection 51(1) of the Act, which reads, in part, as follows:

The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III.

Subsection 3(1), Part III, Schedule III to the Act reads, in part, as follows:

(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 on, 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.

In the alternative, counsel for the appellant argued that, if the sales of the various insurance policy books and manuals are not exempt from FST, the Tribunal should find that the appellant was not the legal manufacturer for the purposes of the Act and was not, therefore, liable to pay FST.

The appellant's first witness, Mr. Ali Hirji, the tax consultant who was responsible for filing the applications for refunds on behalf of the appellant, introduced two examples of goods described as insurance

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

policy books,² with cardboard covers bearing the name of the insurer company, and which have been folded and bound with staples. One of the examples contains the provisions of a personal property insurance policy and the other contains the provisions of an automobile insurance policy. On the back of the automobile insurance policy, there is a description of the various services offered by the insurance company whose name appears on the cover. The policies indicate that they are part of a contract for insurance and that other documents must accompany the policy to form a complete contract.

As an example of the goods in issue described as policy manuals, Mr. Hirji introduced an Otter Dorchester Insurance Company Limited three-ring binder,³ divided into four parts which are entitled: Automobile Manual Ontario; Habitational Manual Ontario; Farm Manual; and Commercial Manual. The index for the Automobile Manual Ontario part includes: General Rules (within which are Cancellation Tables); Underwriting Guidelines and Notes; Rating Territories — Ontario; Rate Groups; Ontario Private Passenger Premiums; Commercial and Farm; and Miscellaneous. The index for the Habitational Manual Ontario part includes: General Rules; Underwriting Guidelines and Notes; Homeowners (within which is a table showing annual premiums); Tenants Package (within which is a table showing annual premiums); Condominium Unit Homeowners (within which is a table showing annual premiums); Secondary or Seasonal Dwelling (within which is a rate table); Builders Risks; Miscellaneous (which includes the rates for fine arts, jewellery, sports equipment, etc.); and Liability (which includes a table showing additional premiums for increased coverage). The index for the Farm Manual part includes: General Rules; Underwriting Guidelines and Notes; Farmpac Outline of Coverages (which includes annual rate tables); Farmers Comprehensive Liability Coverage (which includes a premium table); and Miscellaneous (which includes rates for miscellaneous items).

Mr. Hirji introduced letters⁴ to Ninecan Management Inc. and Taxsave Consultants Limited showing that other publications similar to those in issue have qualified for exemption under paragraph 3(1)(a), Part III, Schedule III to the Act.

The appellant is in the business of manufacturing and producing printed materials for its various customers, primarily insurance companies. The appellant's second witness, Mr. J. David Stephens, President of Informco Inc., described the production process for the goods in issue. The customers provide the appellant with the initial draft of the contents of the publications, as well as some stipulations regarding the graphics and design of the cover. The appellant then converts the text and graphics provided, produces negatives and metal plates, and prints proof copies and design concepts which are provided to the customer for review and comments. Once approved, the customer provides the appellant with a purchase order for a defined number of copies of the publications. For the goods in issue, the appellant ordered all of the materials necessary to produce the publications, including the metal to produce the plates.

Mr. Stephens indicated that, as is common in the printing industry, under the terms of the appellant's sales to the insurance companies, the plates are owned by the insurance companies and the insurance companies own the copyright to the information. He was not able to produce a copy of the terms and conditions. However, he indicated that they are the standard terms and conditions used by the members of the Canadian Printing Industries Association. When asked who would bear the risk of loss in the event of fire

2. Exhibit A-3, Abstainers' Insurance, *Personal Property Protector*; and Exhibit A-4, Liberty Mutual, *Ontario Automobile Insurance Policy (OAP1)*, March 1994.

3. Exhibit A-5.

4. Exhibits A-1 and A-6.

during the printing phase and prior to the materials being sold to the insurance company, Mr. Stephens testified that it would be the appellant.

Mr. Stephens testified concerning the exhibits introduced by Mr. Hirji which, he testified, were representative of all the goods in issue. He described the “policy books” as containing the technical terms and conditions that would apply in describing the kind of insurance that could be purchased under the particular policy. He indicated that the information specific to the insured would not be part of the policy books. According to Mr. Stephens, the identification of the insurer on the book is a requirement in the writing of insurance. When questioned concerning the use of advertising in the publications, Mr. Stephens indicated that they contained no advertising and disagreed that certain statements, such as “Feeling safe. Feeling secure. It’s a mutual feeling,” and factual information about an insurer should be considered a form of advertising.

With respect to the policy manuals, Mr. Stephens testified that these contain technical information required by an employee of an insurance company or an insurance agent or broker who sells insurance.

In argument, counsel for the appellant submitted that, in order to determine whether the policy books are exempt under paragraph 3(1)(a), Part III, Schedule III to the Act, it must be determined that the goods in issue: (1) constitute books; (2) contain no advertising; and (3) are solely for educational or technical purposes. Counsel submitted that the goods in issue meet all three criteria.

With respect to the issue of whether the goods in issue are books, counsel for the appellant referred to the definition of a “book” as “a written or printed work consisting of pages glued or sewn together along one side and bound in covers.”⁵ Counsel referred to an example of a publication that has been considered to be a book, namely, *Perly’s BJ Map Book Metro Toronto and Vicinity*⁶ (Perly’s BJ Map Book). Counsel also referred to Ruling 5740/55-2⁷ of the Department of National Revenue (Revenue Canada) which provides that the following three publications are printed books for purposes of section 3, Part III, Schedule III to the Act: “1. An organizational guide containing chapters on the duty of officers and councillors, structure, and activities of a club. 2. A training manual study course for an oil company’s salesmen in loose leaf form containing instructions on petroleum products, home equipment, sales contracts, leases, mortgages, etc.... 3. Printed booklet outlining the terms of a company’s employee pension plan.” Finally, counsel referred to Revenue Canada Ruling 5740/114⁸ which provides that a “Benefit Statement Booklet ... especially prepared every year for each member of an Employee Benefit Trust Fund” is a book qualifying for exemption under paragraph 3(1)(a), Part III, Schedule III to the Act.

With respect to the issue of whether the goods in issue are “educational” or “technical,” counsel for the appellant referred to the definitions of those terms applied by the Federal Court of Appeal in *Maclean Hunter Limited v. The Deputy Minister of National Revenue for Customs and Excise*.⁹ “Educational” was considered to refer 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

5. *The Concise Oxford Dictionary of Current English*, 9th ed. (Oxford: Clarendon Press, 1995) at 147.

6. *Perly’s Maps Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1986), 11 T.B.R. 236.

7. *Books: Printed Books, Examples Cited*, February 25, 1987.

8. *Benefit Statement Booklets: Whether Exempt Books*, August 9, 1989.

9. [1988] 1 C.T.C. 174, Court File No. A-336-86, January 21, 1988.

utilitarian focus.¹⁰ “Technical” was considered to mean “belonging or relating to an art or arts; appropriate or peculiar to, or characteristic of, a particular art, science, profession; also, of or pertaining to the mechanical arts and applied sciences generally.”¹¹ Counsel also referred to Revenue Canada Ruling 5740/83¹² which provides that “[a] game rulebook and guide, both in book form, [were] published for technical and/or educational purposes in that they provide information, rules, etc. for people interested in playing a certain game.” Counsel submitted that, if the rules of a game, the contract showing the terms of employment and a map are technical or educational, then the goods in issue are technical or educational.

With respect to the third criterion for exemption from FST, that the goods contain no advertising, counsel for the appellant referred to Revenue Canada Ruling 5740/85-1¹³ which states the following in respect of logos: “where a person’s logo is placed in a book by a publisher, with or without their consent, for identification purposes only, this would not be considered to be advertising for the purposes of section 3 of Part III to Schedule III to the *Excise Tax Act*.” Counsel submitted that the purpose of the insurance company’s name on the goods in issue is to meet the legal requirements to identify the insurer and not to promote the sale of a product.

With respect to the policy manuals, counsel for the appellant referred to Revenue Canada Ruling 5740/55-2¹⁴ which provides that manuals in loose-leaf form are books. Counsel submitted that the publications are training manuals for insurance agents and, as such, qualify as technical books. Moreover, counsel submitted that there is clearly no advertising in these publications and that they are not contracts for insurance.

Alternatively, counsel for the appellant argued that, if the goods in issue are not books, then they are parts of contracts for insurance and that the insurance companies, not the appellant, are the manufacturers. Counsel submitted that, if the goods in issue are being assessed as contracts for insurance, then the insurance companies, and not the appellant, are the manufacturers in accordance with the definition of “manufacturer or producer” under subsection 2(1) of the Act. Paragraph (b) of the definition of “manufacturer or producer” under subsection 2(1) states that it includes “any person, firm or corporation that owns, holds, claims or uses any patent, proprietary, sales or other right to goods being manufactured, whether by them, in their name or for or on their behalf by others, whether that person, firm or corporation sells, distributes, consigns or otherwise disposes of the goods or not.”

Finally, counsel for the appellant argued that a ruling had been issued to the effect that the goods in issue were exempt and that the appellant was never given notice that this ruling had been withdrawn.

Counsel for the respondent submitted that there are two issues to be determined by the Tribunal. First, it must be determined whether the goods in issue are books. Second, it must be determined whether the appellant is the legal manufacturer.

As a preliminary issue, counsel for the respondent acknowledged that, at one point in time, Revenue Canada issued a ruling to the appellant that the policy books were exempt from FST. However, she

10. *Ibid.* at 177.

11. *Ibid.*

12. *Books, Advertising, Announcements*, January 9, 1984.

13. *Printed Books — Advertising, Logos*, November 8, 1984.

14. *Supra* note 7.

submitted that the ruling is an administrative ruling and is not determinative of any issues before the Tribunal in this appeal. Counsel also pointed out that there are over 100 different policy manuals and books in issue.

With respect to the policy books specifically, counsel for the respondent submitted that they are part of a contract and cannot, therefore, be called books. Counsel submitted that the substance of the policy books is in the nature of contractual provisions and that the fact that the substance has been printed in book form does not change its nature. In considering whether the substance could be considered to be solely for educational or technical purposes, counsel referred to the definitions of “educational” and “technical” in *Maclean Hunter* and submitted that the policy books, as contracts of insurance, are neither “educational” nor “technical.”

Counsel for the respondent referred to the Tribunal’s decision in *Government of Ontario, Ministry of Transportation v. The Minister of National Revenue*,¹⁵ in which it was found that tender documents were printed books intended for technical purposes. Counsel submitted that the Tribunal considered tender documents to be technical because they contained numerous references to other technical documents, including contract drawings, reinforcing steel schedules and foundation investigation reports. Counsel argued that the policy books in issue do not have anything to do with mechanical arts or applied sciences and are, therefore, distinguishable from tender documents.

With respect to the manuals, counsel for the respondent submitted that, integrally, they are rate tables and would qualify as being an exception to an exemption under the Act.

On the issue of whether the appellant is the legal manufacturer of the goods in issue, counsel for the respondent referred to the Tribunal’s decisions in *Gerrard-Ovalstrapping, Division of EII Limited v. The Minister of National Revenue*¹⁶ and *Security Card Systems Inc. v. The Minister of National Revenue*,¹⁷ in which the provisions of paragraph (b) of the definition of “manufacturer or producer” under subsection 2(1) of the Act were interpreted. The Tribunal stated that, for a person, firm or corporation to be considered a legal manufacturer under paragraph (b), two conditions must be satisfied: (1) a person, firm or corporation must own, hold, claim or use a patent, proprietary, sales or other right to goods being manufactured; and (2) the goods must be manufactured by them, in their name or for or on their behalf by others. With respect to the second condition, the Tribunal stated that it had to determine whether a principal-agent relationship existed between the two companies and that, if a true vendor/purchaser relationship existed between the two companies, one company could not be considered to be manufacturing in the name of or for or on behalf of the other company. Counsel did not dispute that the insurance companies may have an intellectual property right to the contents of the goods in issue. However, counsel submitted that there is a vendor/purchaser relationship between the appellant and the insurance companies and that the appellant did not manufacture the goods in issue in the name of or on behalf of those insurance companies.

In reply, counsel for the appellant stated that counsel for the respondent used the *Maclean Hunter* case to provide a narrow definition of “technical” or “educational” and that, if that case were used in that manner, none of the wide variety of publications that have been qualified as exempt as books for technical or educational purposes, such as Perly’s BJ Map Book and a game rulebook, would ever be exempt.

15. Appeal No. AP-90-106, September 13, 1991.

16. Appeal No. AP-93-289, September 26, 1994.

17. Appeal No. AP-94-167, August 28, 1995.

Finally, counsel for the appellant referred to a letter dated April 20, 1990, from the Excise Branch of Revenue Canada which indicates that the sales of the publication entitled “Canada Pension Plan Contributions and Unemployment Insurance Premium Tables” qualify for unconditional exemption from FST as a printed book designed and published for technical purposes. The publication contains an introduction, a description of employer and trustee responsibilities, coverage and contributions to the Canada Pension Plan, tables of Canada Pension Plan contributions and a description of responsibilities relating to coverage and premiums for unemployment insurance. Counsel pointed out that this book contains rate tables, but that it was not considered to be a rate book.

After having reviewed the evidence and arguments presented by both parties, the Tribunal is not persuaded that either the sales of the goods described as policy books or the sales of those described as policy manuals are exempt from FST under paragraph 3(1)(a), Part III, Schedule III to the Act.

First, with respect to the publications described as policy books, the Tribunal notes that the relevant provision of the Act exempts, among other publications, books that contain no advertising and that are to be used “solely” for educational or technical purposes. Having reviewed the two available examples of publications described as policy books and considered the evidence, the Tribunal concludes that they contain advertising and are not used “solely” for educational or technical purposes.

Counsel for the appellant referred to several rulings which, he submitted, supported his argument that the policy books and policy manuals fall within the exemptions listed under paragraph 3(1)(a), Part III, Schedule III to the Act. While the Tribunal recognizes that administrative interpretation, such as in the Revenue Canada rulings, is “entitled to weight and can be an ‘important factor’ in case of doubt about the meaning of legislation,¹⁸” the Tribunal also recognizes that such administrative rulings, which relate to different goods and persons, are not determinative of the issue of whether the goods in issue are exempt.

The Tribunal has reviewed the definitions adopted by the Federal Court of Appeal in *Maclean Hunter*. In particular, the Tribunal notes that, in that case, “educational” was considered to refer 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.¹⁹” “Technical” was considered to mean “belonging or relating to an art or arts; appropriate or peculiar to, or characteristic of, a particular art, science, profession; also, of or pertaining to the mechanical arts and applied sciences generally.²⁰” The publications in issue in that case were booklets and updates of the Financial Post Corporation Service. The Federal Court of Appeal found that the publications were not educational, but were “informational with a view to fairly immediate commercial use.²¹” Moreover, the Federal Court of Appeal found that the publications in issue were not used “solely” for technical purposes, as they did not pertain to mechanical arts or applied sciences.

In the Tribunal’s view, the publications described as policy books, which are used for commercial purposes as an adjunct to insurance policies, are not used solely for educational or technical purposes. The Tribunal agrees with counsel for the respondent’s argument that the publications described as policy books

18. *Gene A. Nowegijick v. Her Majesty The Queen*, [1983] 1 S.C.R. 29 at 37.

19. *Supra* note 9 at 177.

20. *Ibid.*

21. *Ibid.*

are distinguishable from and do contain similar features to tender documents which were found to be printed books intended for technical purposes in *Government of Ontario*.

With respect to the issue of advertising, the Tribunal notes that it has previously considered advertising to mean “calling the public’s attention to information with the intention of inciting the public to make certain purchasing or patronage decisions.”²² Counsel for the appellant argued that the purpose of the insurance company’s name on the goods in issue is to meet the legal requirements to identify the insurer and that it is not to promote the sale of a product. The Tribunal carefully examined both of the samples provided and is of the view that the description on the back cover of Exhibit A-4 displays more than simply the insurance company’s name. There is information about the company and the insurance products offered which, in the Tribunal’s view, meets the above definition of advertising. As a result, the Tribunal is not able to conclude that the publications described as policy books contain no advertising.

The Tribunal physically examined the one available example of a publication described as a policy manual and is not persuaded, based on such an examination, that the publications in issue qualify for exemption under subsection 3(1), Part III, Schedule III to the Act. While the example provided contains some description about the various elements of the particular policies, it predominantly contains rate tables and information used in determining and identifying applicable rates. As such, the Tribunal is of the view that the publications are rate tables or similar printed matter and are, therefore, excluded from the exemption.

Counsel for the appellant argued, in the alternative, that, if the Tribunal determined that the sales of the goods in issue were not exempt under subsection 3(1), Part III, Schedule III to the Act, it should find, based on paragraph (b) of the definition of “manufacturer or producer” under subsection 2(1) of the Act, that the appellant was not the manufacturer of the publications for the purpose of the imposition of FST under the Act.

In considering whether the appellant falls within this portion of the definition of “manufacturer or producer,” the Tribunal accepts, as it did in *Gerrard-Ovalstrapping* and *Security Card Systems*, that, for a person, firm or corporation to be considered a legal manufacturer under paragraph (b) of the definition of “manufacturer or producer” under subsection 2(1) of the Act, two conditions must be satisfied: (1) a person, firm or corporation must own, hold, claim or use a patent, proprietary, sales or other right to goods being manufactured; and (2) the goods must be manufactured by them, in their name or for or on their behalf by others. With respect to the second condition, the Tribunal, in those appeals, stated that it had to determine whether a principal-agent relationship existed between the two companies and that, if a true vendor/purchaser relationship existed between the two companies, one company could not be considered to be manufacturing in the name of or for or on behalf of the other company.

The Tribunal accepts, for the purpose of this appeal, that the insurance companies may hold certain proprietary rights to the intellectual property and plates used to produce the publications, but this is not determinative of the question of whether or not the appellant is the manufacturer or producer. It is obvious that the appellant manufactured the publications for the insurance companies, but the evidence is clear that the appellant sells the publications manufactured by it to the insurance companies, as a vendor, and not in the name of or for or on behalf of the insurance companies. The evidence that the appellant, not the insurance companies, bears the risk of loss of the publications prior to their sale to the insurance companies and that the

22. *National Geographic Society v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-92-194, October 15, 1993, at 4.

appellant has an independent responsibility for buying raw materials for its own account and printing the goods in issue indicates to the Tribunal that the relationship between the appellant and the insurance companies is not one of principal-agent. The Tribunal, therefore, finds that the appellant was correctly identified as the manufacturer of the goods in issue.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Lyle M. Russell

Lyle M. Russell
Member

Charles A. Gracey

Charles A. Gracey
Member