Docket: 2014-4008(EA)G

BETWEEN:

THE MARK ANTHONY GROUP INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 14 and 15, 2016, at
Vancouver, British Columbia

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant:	Edwin G. Kroft Deborah Toaze
Counsel for the Respondent:	Charles M. Camirand

JUDGMENT

The appeal from the assessment under the *Excise Act, 2001* of the Appellant's reporting periods from September 1, 2010 to August 31, 2012 is allowed and the matter referred back to the Minister for reassessment on the basis that the Appellant's duty shall be reduced by $1,967,652.27.

Costs are awarded to the Appellant. The parties shall have 60 days from the date hereof to reach an agreement on costs, failing which they shall have a further 30 days to file written submissions on costs. Any such submissions shall not exceed 10 pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received, costs shall be awarded to the Appellant as set out in the Tariff.

Signed at Ottawa, Canada, this 26th day of July 2017.

"David E. Graham"

Graham J.

Citation: 2017 TCC 141
Date: 20170726
Docket: 2014-4008(EA)G

BETWEEN:

THE MARK ANTHONY GROUP INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] The Appellant is a producer and distributor of alcoholic beverages. In the periods in question, two of those beverages were Okanagan Premium Cider and Extra Hard Cider. Pursuant to the *Excise Act, 2001*,[1] duty is payable on cider when it is packaged. There is an exemption from that duty for cider produced in Canada and composed wholly of agricultural or plant products grown in Canada.

[2] In the periods in question a small portion of each container of the Appellant's cider contained apple juice concentrate that was made from apples grown outside of Canada. That apple juice concentrate was added after the cider was fermented but before the cider was packaged. The Appellant took the position that the cider qualified for the exemption. Thus, the Appellant did not remit any duty in respect of the cider. The Minister of National Revenue concluded that, because the apple juice concentrate was an agricultural or plant product and was not grown in Canada, the cider did not qualify for the exemption. The Minister assessed the Appellant for over $2,000,000 in duty for its reporting periods from September 1, 2010 to August 31, 2012. The Appellant has appealed that assessment.

[3] The appeal turns solely on an issue of statutory interpretation. The facts are not in dispute. The parties agree how the cider was made and what its ingredients

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[1] S.C. 2002, c. 22 (the "Act").

were. The only issue is whether the exemption can be interpreted to exclude the cider from duty in the circumstances.

A. Imposition of Duty

[4] Before turning to the interpretation of the exemption, it is first necessary to understand how the duty in question arises.

[5] The Act does not contain specific provisions for cider. It defines "alcohol" as "spirits or wine". "Spirits" are defined as "any material or substance containing more than 0.5% absolute ethyl alcohol by volume" other than certain listed types of alcohol. One of those listed types of alcohol is "wine". The definition of "wine" is more complex. "Wine" means:[2]

> (a) a beverage, containing more than 0.5% absolute ethyl alcohol by volume, that is produced without distillation, other than distillation to reduce the absolute ethyl alcohol content, by the alcoholic fermentation of
>
> (i) an agricultural product other than grain,
>
> (ii) a plant or plant product, other than grain, that is not an agricultural product, or
>
> (iii) a product wholly or partially derived from an agricultural product or plant or plant product other than grain;
>
> (b) sake; and
>
> (c) a beverage described by paragraph (a) or (b) that is fortified not in excess of 22.9% absolute ethyl alcohol by volume.
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> [Emphasis added]

[6] Basic cider is caught by paragraph (a) of the definition of wine. It is a beverage produced without distillation by the alcoholic fermentation of apples. Apples are either an agricultural product or a plant product.[3]

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[2] All definitions in this paragraph are found in section 2. All references to section numbers in footnotes refer to the relevant section of the Act.

[3] It is not necessary in this appeal for me to determine the difference between agricultural and plant products or to determine which type of product apples are.

[7] The Appellant's cider, in particular, was caught by paragraph (c) of the definition of "wine". Paragraph (c) refers to wine that otherwise falls within the descriptions in paragraphs (a) or (b) but that has been "fortified". Fortification involves adding spirits to wine. The Appellant's beverages were made by fermenting apples to form apple cider and then adding various other ingredients to the cider to form the beverages that were ultimately packaged and sold. One of those ingredients was a spirit. Thus the Appellant's cider was fortified.

[8] Subsection 135(1) imposes duty on wine that is packaged in Canada. "Packaged" means put into containers of not more than 100 litres that are ordinarily sold to consumers without the alcohol being repackaged.[4] Duty is imposed at the time the wine is packaged and is payable by the person who is responsible for the wine immediately before that time.[5]

[9] The Appellant's beverages were packaged for sale to consumers in containers far smaller than 100 litres. The Appellant was the person responsible for the beverages immediately before the time that they were packaged. Therefore, the Appellant's beverages were subject to duty under subsection 135(1) unless they were covered by the exemption in subsection 135(2).

B. Exemption From Duty

[10] Paragraph 135(2)(a) exempts wine from duty under subsection 135(1) if the wine is "produced in Canada and composed wholly of agricultural or plant product grown in Canada".

[11] This exemption can be broken down into two separate tests:

a) Production Test: The wine must be produced in Canada.

b) Ingredients Test: The wine must be composed wholly of agricultural or plant products grown in Canada.

[12] The Production Test is easy to interpret. The word "produce" has a defined meaning in the Act. "Produce" is defined to mean, "in respect of wine, to bring into existence by fermentation".[6] Therefore, to meet the production test, the wine

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4 Section 2.
5 Subsections 135(3) and (4).
6 Section 2.

must be fermented in Canada. The Appellant's beverages meet this test. There is no dispute that the fermentation of the Appellant's beverages occurred in Canada. As a result, the issue in this appeal centres around the application of the Ingredients Test.

[13] The Ingredients Test is much more difficult to interpret. There are two questions that arise. The first question is when the Ingredients Test is to be applied. The second question is what ingredients are covered. Does the test cover all ingredients that have gone into the wine at the relevant point in time or just some of those ingredients?

C. Possible Interpretations

[14] The parties agree that there are only two times when the Ingredients Test could be applied: (1) when the wine is fermented; or (2) when it is packaged. The Appellant submits that the Ingredients Test should be applied when the wine is fermented. The Respondent submits that the Ingredients Test should be applied when the wine is packaged.

[15] With regard to the ingredients covered by the Ingredients Test, there are really only four plausible interpretations. The following four tests represent three interpretations supported by the legislative history of the exemption and a fourth interpretation proposed by the Respondent:

a) All Ingredients Test: This test would examine all ingredients that went into the wine. It could be applied either at fermentation or at packaging.

b) Fermented Ingredients Test: This test would examine all ingredients that were fermented. Logically, it would only be applied at fermentation.

c) Alcoholic Ingredients Test: This test would examine all ingredients that were changed into alcohol. The test would therefore catch ingredients used to make any spirits that were added to fortify the wine. Logically, this test would only be applied at packaging since the spirits would be added after fermentation.

d) Agricultural / Plant Ingredients Test: This test would examine any agricultural or plant products in the wine. It could be applied either at fermentation or at packaging.

[16] As long as the Ingredients Test is applied when the wine is fermented, the Appellant is indifferent as to which test is used. The Appellant would pass any of the four tests at the time of fermentation since the apple juice concentrate in question was added after fermentation. If the test is to be applied at the time of packaging, the Appellant would accept an Alcoholic Ingredients Test. Because the apple juice concentrate was not converted into alcohol, it would not be caught by that test. The Appellant would fail an All Ingredients Test or an Agricultural / Plant Ingredients Test conducted at the time of packaging.

[17] The Respondent supports an Agricultural / Plant Ingredients Test conducted at the time of packaging. The Respondent takes the position that any agricultural or plant products in the wine must be grown in Canada but that all ingredients in the wine do not have to be agricultural or plant products. The Respondent rejects the other three tests regardless of when they are conducted.

[18] In the circumstances, a textual, contextual and purposive analysis is required to determine the appropriate test to apply and when to apply it.

D. Textual Analysis

[19] I will begin the textual analysis by examining the ingredients covered by the Ingredients Test and then move on to the timing of the test.

Ingredients covered by the Ingredients Test

[20] The exemption requires that the wine be "composed wholly of agricultural or plant product grown in Canada". A textual analysis of the wording strongly supports an All Ingredients Test.

[21] The key words in the exemption are found in the phrase "composed wholly of". I will first consider the meaning of "composed of" and then move on to consider the effect of the addition of the word "wholly".

[22] "Composed" means:[7]

> To be made up, formed, compounded *of* (a material, or constituent elements); to be constituted; to consist *of*.

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[7] *The Oxford English Dictionary*, 2nd ed. *sub verbo* "compose".

[23] The words "composed of" are used to introduce a list of one or more things that make up the item that precedes the words. For example, "Water is composed of two hydrogen molecules and one oxygen molecule." "Composed of" does not indicate that the list that follows is a precise recipe. For example, "Water is composed of hydrogen and oxygen molecules" would be a correct usage of the words even though the number of hydrogen molecules is not set out.

[24] It is debatable whether a list that follows the words "composed of" has to be complete or just has to include the primary components. Clearly, saying that "Water is composed of two hydrogen molecules" is simply wrong as a major component of water has been omitted. Similarly, in the sentence "These pancakes are composed of flour, sugar, baking powder, salt, milk, oil and eggs", if "flour" were omitted, the sentence would be incorrect as flour is the primary ingredient in pancakes. However, it is less clear whether omitting "salt" would be problematic.

[25] The words "composed of" can be contrasted with the word "contains". Where "composed of" must, at a minimum, be followed by a list of the primary components of the item that precedes those words, "contains" can be followed by any component. For example, one could say "This pancake contains salt" or "This pancake contains salt and baking powder", but one would not say "This pancake is composed of salt" or "This pancake is composed of salt and baking powder" since these are only minor ingredients in the making of pancakes.

[26] The words "composed of" can be modified to mean something less than a complete list. For example, one could say that "Pop is composed principally of sugar and water". The adverb "principally" modifies the verb "composed" and indicates that the list that follows is not a complete list of the ingredients of pop, only a list of its principal ingredients.

[27] As set out in paragraph 24, it is debatable whether "composed of" must be followed by a complete list or need only be followed by a list of the primary components. Parliament has removed any doubt in the exemption by adding the adverb "wholly" to the words "composed of". Parliament did not say "composed substantially of" or "composed primarily of" or "composed principally of". Parliament said "composed wholly of". With that choice of words, the list that follows must be a complete list of all of the ingredients in the wine. As a result, the use of the phrase "composed wholly of" strongly supports an All Ingredients Test.

[28] The Respondent, who favours an Agricultural / Plant Ingredients Test, would like me to interpret the exemption as simply requiring that any agricultural

or plant products in the wine must be grown in Canada. In other words, the Respondent would like me to read the exemption as if it applied to wine that is "produced in Canada and not composed of agricultural or plant product other than agricultural or plant product grown in Canada". This is a very different test than examining all of the ingredients that make up the wine. I struggle to see how an interpretation that effectively requires me to replace the word "wholly" with the words "not" and "other than" could in any way be textually consistent with the wording of the exemption.

[29] The fact that the phrase "agricultural or plant product grown in Canada" which follows the phrase "composed wholly of" contains a number of different descriptions of the products does not alter the meaning of "composed wholly of". If the exemption referred to wine "composed wholly of product" there would be no question that every ingredient must be a product (although one might be unsure what a product was). The addition of the phrase "agricultural or plant" provides additional detail about the type of product. With that detail, the exemption would refer to wine that is "composed wholly of agricultural or plant product" and there would be no question that every ingredient in the wine must be an agricultural or plant product. I cannot see how the addition of the phrase "grown in Canada" can change anything. "Grown in Canada" simply provides further details about the agricultural or plant products. It does not change the meaning of "composed wholly of" any more than the addition of "agricultural or plant" did.

[30] The following exercise illustrates this point. Imagine a pile of food on a table. The pile is "composed wholly of Smarties". Now let me describe the Smarties in more detail. The pile is "composed wholly of red Smarties". What do you see? Now let me describe the Smarties in even more detail. The pile is "composed wholly of red Smarties made in Canada". Did the pile just change colour in your mind? Did it go back to having green, yellow and purple Smarties mixed in with it? Of course not. That is because the addition of the description "made in Canada" did not take away from the fact that the pile was composed wholly of red Smarties. It did not indicate that other colours could now be present in the pile so long as the red Smarties were made in Canada. In other words, it did not change the sentence to mean the pile is "not composed of red Smarties other than red Smarties made in Canada".

[31] In view of all of the foregoing, the phrase "composed wholly of" cannot textually support an Agricultural / Plant Ingredients Test.

[32] The original draft of the exemption used the phrase "wholly produced from" instead of "composed wholly of".[8] It is worthwhile to conduct a textual analysis of those words in order to be able to contrast their meaning with the meaning of the words that were ultimately used. "Wholly produced from" has a very different textual meaning than "composed wholly of". In respect of wine, "produce" is defined to mean "to bring into existence by fermentation".[9] Thus, textually, "wholly produced from agricultural or plant product grown in Canada" means "brought into existence wholly by fermentation of agricultural or plant product grown in Canada". Using the phrase "wholly produced from" instead of "composed wholly of" would require the Ingredients Test to examine whether all of the agricultural or plant products that were fermented to make the wine were agricultural or plant products grown in Canada. The same test could actually be achieved by simplifying the exemption so that it read "produced in Canada from agricultural or plant product grown in Canada". Had either this phrase or "wholly produced from" been used, the textual analysis would have strongly supported a Fermented Ingredients Test. However, as it is written, the exemption does not support a Fermented Ingredients Test.

[33] The budget, supplementary information and press release relating to the introduction of the exemption used the phrase "made from 100 per cent".[10] It is worthwhile to conduct a textual analysis of those words in order to be able to contrast their meaning with the meaning of the words that were ultimately used. "Made from 100 per cent" has a very different textual meaning than "composed wholly of". "Made from"[11] generally refers to a thing being changed into something else through some process. For example, one would say "Paper is made from wood". Various mechanical processes occur at a pulp mill to convert the wood fibre into paper. During the process, chemicals may be added, catalysts may be introduced and chemicals may be removed, but, ultimately, wood is converted into paper. Similarly, glass is made from sand, flour is made from grain, wine is made from grapes and apple cider is made from apples. Wood, sand, grapes and

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8 Bill C-451, *An Act to amend the Excise Act, 2001 (wine exemption)*, 1st Sess., 38th Parl., 2005.

9 Section 2.

10 Department of Finance, *The Budget Plan 2006, Focusing on Priorities*, pg. 77; Department of Finance, *The Budget Plan 2006, Focusing on Priorities, Annex 3, Supplementary Information and Notices of Ways and Means Motions*, pg. 216; Department of Finance, *Canada's New Government Is Further Reducing the Tax Burden for Canadian Wineries and Breweries*, Department of Finance Canada, news release 2006-027, June 28, 2006.

11 *The Oxford English Dictionary*, 2nd ed. *sub verbo* "made".

apples may or may not be the only ingredients that go into making those things. They are, however, at least the primary ingredient and they undergo a significant change in the production process.

[34] "Made from" is not simply a different way of saying "contains". A donut may "contain" peanuts, but it is not "made from" peanuts as peanuts are not the primary ingredient and the peanuts do not undergo a change in the process of making the donut. Peanut butter is "made from" peanuts.

[35] "Made from" and "produced from" would generally mean the same thing. However, because "produce" has a defined meaning in the Act, their meaning differs. The defined meaning of "produce" limits the process by which the wine can be created to fermentation. Without that defined meaning, "produced from" would capture other ways in which the wine could have come into existence. Most importantly, it would catch fortified wine (i.e., wine that came into existence through fermentation that was then fortified with spirits that came into existence through distillation or some other process).

[36] Using the phrase "made from 100 per cent agricultural or plant products grown in Canada" would require the Ingredients Test to examine whether all of the primary ingredient or ingredients that were changed into wine through the beverage-making process were agricultural or plant products grown in Canada. This would include both the agricultural or plant products that were fermented and the agricultural or plant products that were distilled or otherwise made into spirits. Had this phrase been used, the textual analysis would have strongly supported an Alcoholic Ingredients Test. However, as it is written, the exemption does not support an Alcoholic Ingredients Test.

[37] In summary, a textual analysis strongly supports an All Ingredients Test. Since the ingredients that follow the phrase "composed wholly of" in the exemption are "agricultural or plant product grown in Canada", the text of the exemption clearly requires that, at whatever time the test is to be applied, the wine must contain no ingredients other than agricultural or plant products grown in Canada.

Timing of the Ingredients Test

[38] There is nothing in the text of the exemption that indicates when the Ingredients Test is to be applied. The exemption covers wine. As discussed above, a beverage qualifies as wine as soon as the fermentation process is completed and

continues to qualify as wine when it is packaged. While both parties make arguments as to why the text of the exemption supports their position, I do not find either of their arguments to be convincing.

[39] The Respondent submits that if Parliament had intended the Ingredients Test to be applied at the time of production it could easily have written the exemption as "produced in Canada wholly from agricultural or plant product grown in Canada". The Respondent submits that the fact that Parliament did not do so indicates that Parliament wanted the Ingredients Test to be applied at the time of packaging. While I see the Respondent's point, I could just as easily interpret the drafting as an indication that Parliament believed "composed wholly of" meant something different than "produced from" and, accordingly, drafted the exemption in the manner it did, not because it wanted the Ingredients Test to be applied at the time of packaging, but rather because it wanted the Ingredients Test to capture a different set of ingredients than the word "produce" would allow.

[40] The Appellant submits that, because the Production Test examines fermentation, Parliament must have intended the Ingredients Test to be conducted at fermentation. I do not find this argument convincing. They are two separate tests. The Production Test examines where the wine was fermented. The Production Test is not conducted at any particular point in time. I therefore do not find it useful in interpreting when the Ingredients Test is to be applied.

Summary

[41] In summary, the text of the exemption does not indicate when the Ingredients Test is to be applied, but clearly indicates that, whenever it is applied, it is an All Ingredients Test. In other words, the wine must contain nothing but Canadian agricultural or plant products. I cannot see any way that the words "composed wholly of" could, in a textual interpretation, be interpreted in a manner consistent with a Fermented Ingredients Test, an Alcoholic Ingredients Test or an Agricultural / Plant Ingredients Test.

E. Contextual Analysis

[42] Unfortunately, a contextual analysis offers little assistance in interpreting the Ingredients Test. Strong contextual arguments can be made for many different positions. Furthermore, the contextual analysis does not reveal any ambiguities in the text.

[43] The duty is imposed at the time that the wine is packaged and is payable by the person who was responsible for the wine immediately before it was packaged.[12] Since the exemption is designed to give relief from that duty, arguably, any test to qualify for that relief should be applied to the wine at the time of packaging. Similarly, the duty is applied to the entire volume of the packaged beverage, not just the alcohol. Since the exemption is designed to give relief from that duty, arguably, the test to qualify for that relief should be applied to the entire volume of the wine, not just the ingredients that went into making the alcohol (i.e., an All Ingredients Test or an Agricultural / Plant Ingredients Test).

[44] At the same time, the duty arises because the beverage contains alcohol. Duty is not applied to grape juice. It is applied to wine. This suggests that the Ingredients Test should only be applied to those ingredients that went into making the alcohol (i.e., a Fermented Ingredients Test or an Alcoholic Ingredients Test). The alcoholic content is created at the fermentation stage, not the packaging stage. This suggests that the Ingredients Test should be applied at the fermentation stage. However, wine is sometimes fortified with spirits after the fermentation stage. This suggests that the Ingredients Test should be applied at the packaging stage in order to catch these spirits.

[45] The reference in the exemption to "agricultural or plant product" parallels similar references in the definition of "wine." This could suggest that the products that are being referred to in the exemption are the ingredients that were fermented, rather than all ingredients. This supports a Fermented Ingredients Test and supports the test being conducted at fermentation. However, the definition of "wine" specifically excludes grains whereas the exemption does not. This difference suggests that the exemption is intended to apply to a broader set of ingredients than simply those that go into the fermentation.

[46] The Appellant points out that subsection 135(2) provides three exemptions from the duty. Paragraphs 135(2)(a.1) and (b) both refer to production and packaging. However, the exemption in issue (paragraph 135(2)(a)) only refers to production. Thus, the Appellant argues that the lack of a reference to packaging in the exemption indicates that the Ingredients Test is to be applied at the time of fermentation. It appears to me that the word "packaged" in paragraphs 135(2)(a.1) and (b) is used with a different purpose. Paragraph 135(2)(a.1) refers to wine "produced and packaged by an individual for their personal use" and paragraph 135(2)(b) refers to wine "produced by a wine licensee and packaged by or on

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[12] Subsections 135(3) and (4).

behalf of the licensee during a fiscal month". Both of these exemptions are focused on who produced and packaged the wine. Neither of them involves establishing the time at which a particular test should be applied. In essence, the Appellant is arguing that Parliament could have said "produced in Canada and, when packaged, composed wholly of". One could just as easily argue that Parliament could have said "produced in Canada and, when produced, composed wholly of". I do not find it significant that paragraphs 135(2)(a.1) and (b) use the word "packaged" and paragraph 135(2)(a) does not.

[47] Subsection 134(1) imposes duty on "bulk" wine that is "taken for use". "Bulk" wine means wine that is not packaged.[13] "Taken for use" means consumed, analyzed or destroyed, or used for a purpose that results in a product other than alcohol.[14] Paragraph 134(3)(a) contains an exemption from this duty for wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada. Thus the same exemption applies to both bulk wine taken for use and wine that is packaged. The Appellant argues, in essence, that since the bulk wine is never packaged, Parliament must have intended the Ingredients Test to be applied at fermentation instead of packaging. I agree that bulk wine is never packaged. If it were, it would no longer be bulk wine. However, the equivalent of packaging for bulk wine is taking the wine for use. If a consumer visits a winery, the winery can sell him or her a bottle of wine, in which case duty would already have applied at the time the wine was packaged. Alternatively, the winery can pour the consumer a glass of wine directly from a large vat[15] at which point the wine would have been taken for use and duty would apply. I do not see any difference between these two scenarios that would help me to understand whether the Ingredients Test should be applied at fermentation or at packaging / taking for use.

[48] There are no provisions elsewhere in the Act that cause me to question the textual meaning of the phrase "composed wholly of". The only other place that the phrase is used in the Act is in paragraph 134(3)(a). It is not used in a way that suggests it has a different meaning or that creates ambiguity.

[49] In summary, a contextual analysis offers little guidance and does not reveal any ambiguities in the text.

F. Purposive Analysis

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13 Section 2.

14 Section 2.

15 The vat would have to be larger than 100 litres to avoid the packaging rules.

[50] A purposive analysis supports both the Alcoholic Ingredients Test and the Agricultural / Plant Ingredients Test. It does not reveal any ambiguities in the text.

History of the exemption

[51] In order to determine the purpose of the provision, it is helpful to examine the history of the exemption.

[52] The exemption received first reading in November 2005 in a private member's bill. It was proposed that it be added as section 135.1 and that it read:[16]

> Notwithstanding sections 134 and 135, no duty shall be imposed on the first 900,000 litres of wine that are, in the aggregate, packaged by or taken for use from a wine licensee in a year if the wine is wholly produced from plants, plant products or agricultural products grown in Canada.
>
> [Emphasis added]

[53] The first version never made it past first reading. It died a few days later when a motion of non-confidence triggered an election.

[54] The exemption was reintroduced by the new minority government in its May 2006 budget. The Budget Plan 2006 described the exemption as follows:[17]

> Budget 2006 proposes to support the Canadian wine industry by providing excise duty relief to wines made from 100-per-cent Canadian-grown product. Excise duty reductions for small brewers are also proposed. These measures will help the competitiveness of small and medium-sized vintners and brewers.
>
> [Emphasis added]

[55] The most significant changes in this version of the exemption are the reduction of the cap from 900,000 litres to 500,000 litres and the use of the words "made from 100 per cent" rather than "wholly produced from".

[56] The Supplementary Information to the budget described the exemption as follows. Again, note the use of the words "made from 100 per cent":[18]

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16 Bill C-451, *An Act to amend the Excise Act, 2001 (wine exemption)*, 1st Sess., 38th Parl., 2005.

17 Department of Finance, *The Budget Plan 2006, Focusing on Priorities*, pg. 77.

> Budget 2006 proposes to exempt from duty the first 500,000 litres of wine produced and packaged by a wine licensee per year made from 100 per cent Canadian-grown agricultural products.
>
> The proposed relief will apply to all goods falling within the definition of wine in the Act (including ciders, wine coolers, fruit wines and sake) made from 100 per cent Canadian-grown agricultural products. The relief will be available to wine licensees operating in Canada.
>
> [Emphasis added]

[57] In a press release dated just days before the proposed effective date of the new legislation, the Department of Finance announced that, after further consultations with the industry, the 500,000-litre cap would be eliminated. The press release indicated that draft legislative proposals were being released the same day.[19] The press release used the words "made from 100 per cent" and gave no indication that the Department proposed to change the exemption from a "made from 100 per cent" exemption to a "composed wholly of" exemption. However, the accompanying legislative proposals used the phrase "composed wholly of".[20]

[58] A Notice of Ways and Means Motion in respect of the exemption was issued in October 2006. It reflected the promised removal of the 500,000-litre cap. It proposed the same language for the exemption, including the phrase "composed wholly of" that was ultimately enacted by Parliament.[21] The explanatory notes accompanying the Notice of Ways and Means Motion mimic the "composed wholly of" language of the exemption.[22]

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18 Department of Finance, *The Budget Plan 2006, Focusing on Priorities, Annex 3, Supplementary Information and Notices of Ways and Means Motions*, pg. 216.

19 Department of Finance, *Canada's New Government Is Further Reducing the Tax Burden for Canadian Wineries and Breweries*, Department of Finance Canada news release 2006-027, June 28, 2006.

20 Department of Finance, *Legislative Proposals Amending the Excise Act, 2001 and the Excise Act in Respect of Canadian Wine and Beer*, s. 2(1).

21 Department of Finance, *Notice of Ways and Means Motion to Implement Certain Provisions of the Budget Tabled in Parliament on May 2, 2006*, clause 57.

22 Department of Finance, *Explanatory Notes Relating to Remaining Budget 2006 Income Tax Measures, Dividend Taxation and Canadian Vintners and Brewers,* October 2006, pg 87.

[59] The exemption was ultimately added to the Act in 2007, with effect after June 2006.[23]

[60] There is nothing in the history of the exemption that suggests that Parliament ever considered employing an Agricultural / Plant Ingredients Test. As set out above, there was a progression from the wine being "wholly produced from" (a Fermented Ingredients Test), to it being "made from 100 per cent" (an Alcoholic Ingredients Test), to it being "composed wholly of" (an All Ingredients Test).

[61] The question that arises is whether, in using the phrase "composed wholly of", Parliament was intentionally moving the Ingredients Test away from a Fermented Ingredients Test to an All Ingredients Test. The fact that the wording from the first draft was not reused in the new draft suggests that there was an intentional move away from a Fermented Ingredients Test. This is particularly true because the defined term "produced" was abandoned in favour of a different term, "composed". However, what is unclear is whether Parliament's use of the words "composed of" instead of "made from" was an intentional choice of an All Ingredients Test over an Alcoholic Ingredients Test or simply a different choice of words.

[62] In summary, the history of the exemption supports an Alcoholic Ingredients Test or an All Ingredients Test. It does not support the other two tests.

Problems with various ingredients

[63] There are strong purposive arguments against Parliament having intentionally moved to an All Ingredients Test. Such a test would have a number of consequences that I can only presume Parliament could not have intended. A beverage that contained any ingredient that was not an agricultural or plant product grown in Canada would not qualify for the exemption. Consider the following ingredients:

a) Artificial preservatives, colours or flavours: There is no indication that Parliament's intention was to create an exemption that would only apply to organic beverages, yet that would be a consequence of an All Ingredients Test. Artificial preservatives, colours or flavours would all put a beverage offside.

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[23] *A second Act to implement certain provisions of the budget tabled in Parliament on May 2, 2006*, SC 2007, c 2, s. 57(1).

b) Natural, non-agricultural or non-plant additives: Any natural additives that were not agricultural or plant products would make the exemption unavailable. An example that comes to mind is salt. Salt is a natural ingredient that is used as a beverage additive but is not an agricultural or plant product.

c) Natural agricultural or plant additives not grown in Canada: All natural additives that did come from agricultural or plant products would have to be derived from Canadian products. The Appellant used citric acid to adjust the acidity of its beverages. I have a hard time imagining that Parliament would have intended to deny the exemption to any taxpayer who could not buy citric acid made from Canadian citrus fruits. The Appellant used natural mango flavouring in its mango cider.[24] I similarly have a hard time imagining that Parliament would have intended to deny the exemption to the Appellant unless the Appellant somehow sourced Canadian mangos. In legislation clearly aimed at helping Canadian vintners and farmers, it would make little political or economic sense to design an exemption that had the potential to exclude products made with Canadian grapes and apples due to a shortage of Canadian orange and mango groves.

d) Water: Water is the single largest ingredient by volume in each of the Appellant's beverages. There is no indication that Parliament was concerned about the use of water in beverages, but, since water is neither an agricultural nor a plant product, the addition of even a small amount of water would prevent the exemption from being claimed. What possible purpose could Parliament have been hoping to achieve in imposing duty on alcoholic beverages that contain water? It would not help vintners. It would not help farmers.

e) Carbonation: The Appellant's beverages were carbonated, as are many coolers, ciders and "hard" fruit drinks. The carbonation was added in the form of carbon dioxide gas. It cannot have been Parliament's intention that vintners would have to obtain their carbon dioxide gas from Canadian agricultural or plant products.

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[24] To be clear, no mangos were fermented to create the cider. The mango flavouring was added after the fermentation process.

[64] The concern in paragraph 63(c) regarding natural agricultural or plant additives not grown in Canada would be present in an Agricultural / Plant Ingredients Test but the other concerns would not.

[65] None of the above concerns would be present if a Fermented Ingredients Test were used. In a Fermented Ingredients Test, if a wine was fermented from grapes, the grapes would have had to be grown in Canada. If a cider was fermented from apples, the apples would have had to be grown in Canada. Since none of the offending ingredients described above would have been fermented, their addition would not put a beverage outside the exemption. Similarly, none of the above concerns would be present were an Alcoholic Ingredients Test to be used. In an Alcoholic Ingredients Test, none of the offending ingredients described above would have been fermented or distilled, so their addition would not be problematic.

[66] In summary, the above problems argue strongly against an All Ingredients Test. They also favour a Fermented Ingredients Test or an Alcoholic Ingredients Test over an Agricultural / Plant Ingredients Test.

Purpose of the exemption

[67] Overall, the purpose of the exemption argues strongly against an All Ingredients Test but supports the other three tests.

[68] It seems to me that the purpose of the exemption was to support Canadian vintners and farmers. That said, the needs of the two groups are in conflict. Farmers want to sell a lot of agricultural or plant products at a high price. Vintners want to buy agricultural or plant products at a low price. They also want to be able to easily meet the requirements of the exemption so that they do not have to pay duty. Thus, vintners would prefer a test that catches the fewest ingredients possible and that focuses on ingredients readily available in Canada. Farmers would prefer a test that catches a large number of ingredients but not so many ingredients that it makes the exemption unachievable for vintners.

[69] An All Ingredients Test harms vintners by unduly restricting the ingredients that they can use in creating marketable beverages and thus harms farmers by making vintners less interested in qualifying for the exemption and thus less interested in buying the agricultural or plant products that the farmers have to offer. For example, if vintners realized that they could never qualify for the exemption because one of the ingredients in their beverages was water, those

vintners would be more likely to buy less expensive imported apples than to buy more expensive Canadian ones, thus harming Canadian farmers.

[70] An Agricultural / Plant Ingredients Test removes the undue restrictions imposed by an All Ingredients Test, but it still has the potential to cause problems for vintners who use agricultural or plant products such as citric acid or mango that are not easily sourced from products grown in Canada. Farmers cannot benefit from a requirement to buy products that they do not grow, but they do benefit from the inclusion of as many of their products as possible.

[71] A Fermented Ingredients Test is the least restrictive test and thus helps vintners the most. However, it provides far less support to farmers as it does not catch any agricultural or plant products that are not fermented. In particular, as discussed in more detail below, sugar, fruit juices and fruit juice concentrates added after fermentation would not be caught. At the same time, the undue restrictions of an Agricultural / Plant Ingredients Test are avoided.

[72] An Alcoholic Ingredients Test helps farmers more than a Fermented Ingredients Test because it catches the agricultural or plant products used to make spirits that are used to fortify the wine, but it still has the potential to leave a lot of agricultural or plant products out.

[73] In summary, the purpose of the exemption argues strongly against an All Ingredients Test, but supports all three of the remaining tests. Generally, the goal of helping vintners is better achieved with a Fermented Ingredients Test or an Alcoholic Ingredients Test and the goal of helping farmers is better achieved with an Agricultural / Plant Ingredients Test.

Fortified wine loophole

[74] A Fermented Ingredients Test creates a loophole that undermines the purpose of the exemption. That loophole is not present in the other tests.

[75] A Fermented Ingredients Test considers whether the wine was “wholly produced from agricultural or plant product grown in Canada”. Because “produced” means “brought into existence through fermentation”, a Fermented Ingredients Test examines whether the agricultural or plant product that was fermented was grown in Canada. Any agricultural or plant products used to create any spirits that are used to fortify the wine are not caught by a Fermented Ingredients Test since those ingredients were not fermented.

[76] As an example, let us assume that a wine made with grapes is fortified with vodka made from distilled grain. The resulting "wine" is "made from" grapes and grain, and is "composed of" grapes and grain, but is "produced from" grapes. This is because the grapes are fermented but the vodka is distilled.

[77] This difference with fortified wines would result in a significant loophole in the legislation if a Fermented Ingredients Test were used. Imported spirits are subject to customs duties. Those duties are relieved if the spirits are used to fortify wine.[25] Thus, if a spirit were imported and then used to fortify wine, no matter how little fermented wine there was in the resulting beverage, so long as the fermented portion of the wine had been made from Canadian agricultural or plant products, the beverage would be exempt from duty. The import duty would have been relieved upon fortification and an exemption designed to encourage Canadian vintners and farmers would have applied to relieve duty on a beverage the alcoholic content of which was made mostly from non-Canadian grain.

[78] This loophole is not present with the other three tests. In the above example, an Alcoholic Ingredients Test would catch the imported vodka. The beverage would be "made from" grapes and grain. Since the grain was not Canadian grain, the exemption would not be available. An All Ingredients Test and an Agricultural / Plant Ingredients Test would also catch the vodka because, although it was an ingredient that would have been made from an agricultural or plant product, that product would not have been Canadian.

[79] This is not a theoretical concern. The vast majority of the alcoholic content of the Appellant's beverages comes from the fortifying spirits added to the cider, not from the cider itself.[26] A small number of the Appellant's beverages were made using imported spirits. The Appellant has conceded that duty applies to those beverages. However, if the test to be applied were a Fermented Ingredients Test, those beverages would not have been subject to duty despite the vast majority of their alcoholic content having been obtained from imported spirits.

[80] Before moving on, I would like to make one other comment on the loophole. The Respondent focused a portion of her argument on the role of paragraph

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25 Subsection 130(2).

26 In the interests of protecting the confidentiality of the Appellant's recipes, I am neither going to name the spirit nor give the precise measurements. Suffice it to say that the fortifying spirit has an alcoholic content that is a significant multiple of the cider's alcoholic content and that, in addition, the volume of the fortifying spirit added to the beverages is a significant multiple of the volume of cider added.

131.2(1)(b), but it is not entirely clear to me why. Paragraph 131.2(1)(b) deals with the opposite of fortification. It applies to spirits that have wine added to them but that remain spirits. It deems the production of those spirits to occur when the wine and the spirits are blended. Paragraph 131.2(1)(b) is an essential part of the provisions that impose duty on spirits. Duty is imposed on spirits at the time of production.[27] It is paid on the volume of the spirits produced. If wine is later added to the spirits, the volume of the resulting spirits is increased. Thus, unless the time of production is deemed by paragraph 131.2(1)(b) to be the time of blending, no duty will apply to that extra alcoholic volume. This problem is not present for wine. Duty on wine is imposed at packaging. Thus any spirits blended into the wine are already part of the volume on which the duty is applied at packaging.

[81] I do not think I can take any contextual or purposive meaning from paragraph 131.2(1)(b), as the paragraph serves a purpose (ensuring that the entire volume of spirits is subject to duty, as opposed to only part of the volume) that is not relevant to wine. In the Appellant's case, either the entire volume of the wine will be exempt from duty because the exemption applies or the entire volume of the wine will be subject to duty because the exemption does not apply. There is no situation where the part of the volume of the wine that came from fermented wine will be subject to duty and the part that came from spirits will not, or vice versa. Thus I am not sure what assistance paragraph 131.2(1)(b) can provide. I understand that a provision like paragraph 131.2(1)(b) that deemed wine blended with spirits to have been produced at blending would close the fortified wine loophole. However, no such provision exists in the Act and I am certainly not about to create one on behalf of Parliament. Since there is no exemption from duty for spirits wholly composed of agricultural or plant product grown in Canada, the purpose of paragraph 131.2(1)(b) is clearly not to close an equivalent loophole. Thus I cannot even take from paragraph 131.2(1)(b) an intention on the part of Parliament to avoid similar loopholes. In summary, while the Respondent relies on paragraph 131.2(1)(b), I do not find it helpful.

Sugar, fruit juice and fruit juice concentrate

[82] The treatment of sugar,[28] fruit juice and fruit juice concentrate is a significant issue. Fruit juice or fruit juice concentrate can be fermented to create alcohol, but they can also be added after fermentation to add flavour or increase sweetness. Sugar can be added during the fermentation process to increase

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27 Section 122.

28 In this discussion, sugar includes corn syrup.

alcoholic content and sweetness, but it can also be added after the fermentation process to increase sweetness.

[83] It is difficult to discern how Parliament wanted sugar, fruit juice and fruit juice concentrate treated. Parliament clearly wanted to support Canadian farmers. Given the amount of fruit used in wine making, it seems likely that Parliament's goal was to support Canadian fruit growers. As a result, it seems unlikely that Parliament would have wanted to distinguish between fruit juice or fruit juice concentrate that was fermented and fruit juice or fruit juice concentrate that was added for flavouring purposes. Whether fermented or not, fruit juice and fruit juice concentrate come from fruit and fruit growers grow fruit.

[84] It seems less likely to me that Parliament's goal was to support Canadian sugar beet farmers, but I have no way of knowing that. It may well be that Parliament hoped to support the Canadian sugar industry as well.

[85] It is difficult to imagine a test based on agricultural or plant products that bears any relation to the text of the exemption that would catch fruit juice and fruit juice concentrate but exclude sugar. The two types of ingredients really go hand in hand. Both are agricultural or plant products. Both can be added before or after fermentation. Both add sweetness. Both can increase alcoholic content. The only real difference is that fruit juice and fruit juice concentrate can also add flavour.

[86] An All Ingredients Test or an Agricultural / Plant Ingredients Test would catch any sugar, fruit juice or fruit juice concentrate added to the wine regardless of the reason that it was added since all of these products are agricultural or plant products.

[87] A Fermented Ingredients Test would catch any fruit juice or fruit juice concentrate that was fermented but would not catch any fruit juice or fruit juice concentrate added after the fermentation process. While I believe that sugar added during the fermentation process is itself fermented, I do not have enough information to be confident of that fact. If it is, then any sugar added during fermentation would be caught by a Fermented Ingredients Test. A Fermented Ingredients Test would not catch any sugar added after fermentation.

[88] An Alcoholic Ingredients Test would operate the same way as a Fermented Ingredients Test. The only difference would be that any spirits used to fortify the wine could not be made from non-Canadian sugar, fruit juice or fruit juice

concentrate. For example, if wine were fortified with rum distilled from sugar, that sugar would have to be Canadian sugar.

[89] In summary, if Parliament's goal was to support Canadian fruit farmers, that goal is best achieved by ensuring that fruit juice and fruit juice concentrate are caught regardless when they are used in the process. That goal favours an All Ingredients Test or an Agricultural / Plant Ingredients Test. While Parliament may have wanted sugar treated differently from fruit juice and fruit juice concentrate, unless sugar is not itself fermented, none of the tests actually treats sugar, fruit juice and fruit juice concentrate any differently from one another.

Enforcement of the exemption

[90] While the parties have provided me with various documents indicating the CRA's views on the Ingredients Test, I have not relied on those documents in determining the purpose of the exemption. It is clear to me that these documents do not represent the CRA's interpretation of the exemption enacted by Parliament, but rather represent an exemption that the CRA has itself designed with little regard for the actual wording of the legislation. The CRA's position appears to be what could best be described as an Agricultural / Plant Ingredients Test that ignores the fact that sugar is an agricultural or plant product and also ignores any agricultural or plant products that are "incidental ingredients" or "food additives", unless those ingredients or additives happen to be fruit juice.[29] While the result may arguably be a practical test, it is not a test that is in any way supported by the legislation.

Conclusion regarding ingredients covered by the Ingredients Test

[91] Overall, the purposive analysis supports either an Alcoholic Ingredients Test or an Agricultural / Plant Ingredients Test.

[92] The fact that the first draft of the exemption used a Fermented Ingredients Test and the final version used an All Ingredients Test indicates that Parliament was intentionally moving away from a Fermented Ingredients Test. It may be that Parliament realized the loophole that a Fermented Ingredients Test caused and was trying to avoid it. In any event, an interpretation that undermines the purpose of the exemption by creating a loophole should be avoided.

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29 *Excise Duty Notice 15, Additional Information Relating to the Excise Duty Exemption on 100% Canadian Wine*, June 2006; *Excise Duty Memorandum 4.1.1, Producers and Packagers of Wine*, July 2003 (Revised January 2007 and June 2014).

[93] In using an All Ingredients Test, Parliament walked into a number of significant problems that undermined the very purpose it was trying to achieve.

[94] An Alcoholic Ingredients Test and an Agricultural / Plant Ingredients Test both support the purpose of the exemption. The former helps vintners more and the latter helps farmers more (particularly fruit growers).

[95] Whereas there is support for an Alcoholic Ingredients Test in the budget, the supplementary information and the press release related to the second attempt at passing the exemption, there is no such support for an Agricultural / Plant Ingredients Test.

[96] In light of all of the foregoing, the purposive analysis supports either an Alcoholic Ingredients Test or an Agricultural / Plant Ingredients Test with the former having more support in the legislative history.

Timing of the ingredients test

[97] I will now conduct a purposive analysis of the timing of each of the four plausible tests.

[98] An All Ingredients Test could be applied at either fermentation or packaging. A purposive analysis suggests that an All Ingredients Test should be applied at fermentation. The purpose of the exemption is significantly impaired by an All Ingredients Test. Less harm would come to the purpose if that test were applied at fermentation rather than at packaging as fewer ingredients would be caught.

[99] Since a Fermented Ingredients Test only considers the agricultural or plant product that is fermented, there would be no purpose to applying it at any time other than fermentation.

[100] An Alcoholic Ingredients Test or an Agricultural / Plant Ingredients Test could be applied either at fermentation or packaging but, to the extent that the purpose of the exemption is better achieved without the fortified wine loophole, both tests would be better applied at packaging.

G. Conclusion of Textual, Contextual and Purposive Analysis

[101] In summary, while there is textual ambiguity as to when the Ingredients Test is to be applied, there is absolutely no textual ambiguity as to what ingredients it is to cover. The words "composed wholly of" allow for no other meaning than that every ingredient in the wine must meet the test. Their meaning is very different than "wholly produced from" and "made from 100 per cent" and not even close to the meaning required to support an Agricultural / Plant Ingredients Test. The contextual analysis does not provide any assistance. The purposive analysis argues against a Fermented Ingredients Test and strongly against an All Ingredients Test and supports an Alcoholic Ingredients Test or an Agricultural / Plant Ingredients Test.

[102] In *Canada Trustco Mortgage Co. v. The Queen*,[30] the Supreme Court of Canada made it clear that, when interpreting a tax provision, a purposive analysis may reveal patent ambiguity in apparently plain language. That has not happened in this appeal. The purposive analysis has revealed that the plain language largely undermines the purpose of the exemption, but the analysis has not revealed any patent ambiguity in the text of the exemption. The language is still entirely clear.

[103] If the purposive analysis had demonstrated that it was impossible to make wine using only agricultural or plant products, a patent textual ambiguity would have been revealed. The phrase "composed wholly of" would have to have been given a meaning other than its normal grammatical meaning. For example, if I say "this car is composed wholly of steel made in Canada", because you know that it is impossible to make a car using only steel, you automatically adjust the ordinary grammatical meaning of the sentence and interpret it to mean that any steel in the car must have been made in Canada. In other words, your purposive analysis of how cars are made reveals an ambiguity in your textual understanding of the sentence and you therefore adjust the ordinary grammatical meaning of the sentence so that it makes sense. The problem with the exemption in question is that there is no evidence that it is either impossible or even difficult to make wine using only agricultural or plant products. The Appellant fermented cider using nothing but apples.[31] Yes, there are products like the Appellant's that use other ingredients, but there is no requirement to use such ingredients to create "wine". Thus, while

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30 2005 SCC 54.

31 The Appellant then took that cider and mixed it with other ingredients to make its end beverage. However, had it simply stopped once the cider was fermented, it would have made "wine" using nothing but agricultural or plant products.

the purposive analysis has revealed situations where ingredients that are added will prevent a beverage from qualifying for the exemption, it has not revealed a patent ambiguity in the text. The text, as written, can still apply.

[104] The fact that there is ambiguity over when the test is to be applied does not create any ambiguity over what ingredients the test is to cover. The test covers all ingredients. It may be textually unclear whether the test applies to all ingredients at fermentation or to all ingredients at packaging, but it is still clear that it applies to all ingredients.

[105] It is not my role to use a purposive analysis to override unambiguous text. As the Supreme Court of Canada stated in *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*[32]

> The interpretive approach is thus informed by the level of precision and clarity with which a taxing provision is drafted. Where such a provision admits of no ambiguity in its meaning or in its application to the facts, it must simply be applied. Reference to the purpose of the provision "cannot be used to create an unexpressed exception to clear language": see P. W. Hogg, J. E. Magee and J. Li, *Principles of Canadian Income Tax Law* (5th ed. 2005), at p. 569; *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622. Where, as in this case, the provision admits of more than one reasonable interpretation, greater emphasis must be placed on the context, scheme and purpose of the Act. Thus, legislative purpose may not be used to supplant clear statutory language, but to arrive at the most plausible interpretation of an ambiguous statutory provision.
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> [Emphasis added]

[106] On the basis of all of the foregoing, I find that the Ingredients Test is an All Ingredients Test.

[107] The question that remains is when the Ingredients Test is to be applied. Neither the text nor the context provides any guidance on that issue. I am therefore free to rely on the purpose of the exemption when considering the timing. Applying the test at fermentation will cause less harm to the purpose of the exemption than applying it at packaging. Therefore, I find that the test should be applied at fermentation. I am aware that this leaves the fortified wine loophole open, but I find that to be the lesser of two evils. Better that a beverage containing imported spirits be duty-free than that a beverage be subject to duty merely

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[32] 2006 SCC 20 at para 23.

because water, carbonation, flavouring, colouring, preservatives or other additives were added after fermentation.

[108] For clarity, under this conclusion, paragraph 135(2)(a) would be read as if it applied to wine "produced in Canada and, when produced, composed wholly of agricultural or plant product grown in Canada".

[109] I am aware that this decision will likely cause significant production problems and/or financial hardships for many vintners. In particular, if my understanding that sugar is fermented is correct, non-Canadian sugar that is added at the fermentation stage will make the exemption unavailable. Similarly, the addition of any preservative that is not an agricultural or plant product grown in Canada will put a beverage offside. Presumably vintners will ask Parliament to amend the text of the exemption to better align it with either its intended purpose or a more practical purpose. It is not my role to make the amendment for them.

H. Application to the Appellant's Beverages

[110] There is no dispute that the only ingredients that were added to the Appellant's cider during fermentation were agricultural or plant products grown in Canada. The apple juice concentrate in issue was added after fermentation. Therefore, the exemption applies to the Appellant's cider.

[111] A small portion of the Appellant's beverages were fortified with imported spirits. The Appellant was assessed duty of $39,970.28 on those beverages. The Appellant conceded that it was required to pay duty on those beverages. Thus, that issue was no longer before me. Therefore, despite the fact that I have concluded that those beverages would qualify for the exemption, I cannot issue judgment to that effect.

I. Decision

[112] The Appeal is allowed and the matter referred back to the Minister for reassessment on the basis that the Appellant's duty be reduced by $1,967,652.27 (being the $2,007,662.55 in duty assessed less the $39,970.28 concession made in respect of the beverages made with imported spirits).

J. Costs

[113] Costs are awarded to the Appellant. The parties shall have 60 days from the date hereof to reach an agreement on costs, failing which they shall have a further 30 days to file written submissions on costs. Any such submissions shall not exceed 10 pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received, costs shall be awarded to the Appellant as set out in the Tariff.

Signed at Ottawa, Canada, this 26th day of July 2017.

"David E. Graham"

Graham J.

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