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A-288-94

Human Life International in Canada Inc. (*Appellant*)

v.

The Minister of National Revenue (*Respondent*)

Indexed as: Human Life International in Canada Inc.v. M.N.R. (C.A.)

Court of Appeal, Isaac C.J., Strayer and Robertson JJ.A."Ottawa, February 4, 5 and March 18, 1998.

Charities — Appeal from revocation of registration as charitable organization on ground appellant not devoting substantially all resources to charitable activity — Aims, objects: to protect unborn, elderly, handicapped, to promote true Christian family values, encourage chastity, teach natural family planning — Activities including lectures, seminars, conferences, publication of literature advocating point of view — After 1989 audit, Minister not recommending appellant change conduct — In 1993, after second audit, Revenue Canada advised appellant of concerns and that revocation under consideration — Charitable organization registration revoked in 1994 — (1) Appellant's activities not educational — Directed neither toward formal training of mind nor improvement of useful branch of human knowledge — Producing material concerned with dissemination of opinions on social issues — Activities not serving other purposes beneficial to community — Activities primarily designed to sway public opinion on social issues not charitable activities — (2) Appellant not demonstrating by systematic analysis resources devoted to political activities insubstantial — As apparently substantial part of activities devoted to political purposes, and Income Tax Act requiring all resources of charitable organization be devoted to charitable activities, appellant not demonstrating Minister erred in concluding appellant not charitable organization — (3) Minister not abusing discretion in revoking registration by changing position after second audit — No basis on which Minister precluded from changing position after four years, second audit.

Income tax — Charitable organization registration — Appellant's registration revoked under Income Tax Act, s. 168(1) as not devoting substantially all resources to charitable activity — Statutory appeal directly to F.C.A. under s. 180 — Appellant's aims to protect unborn, promote true Christian family values, encourage chastity — M.N.R. audited appellant in 1989 but appellant not warned to change conduct — After second audit in 1993, M.N.R. expressed concerns whether appellant's activities qualified as charitable, warned revocation under consideration — Registration revoked in 1994 — Appellant arguing political activities incidental to charitable objects — Income Tax Act nowhere defines —charity— — Principles based on old English cases, statute enacted in 1601 — Federal Court having developed principles appropriate for Canada — Area crying out for clarification by legislation — Onus on appellant to show M.N.R. erred in

conclusions upon which registration revoked — Onus not discharged — Appellant's activities directed to dissemination of opinions on social issues, not research or systematic development of body of knowledge — Case law to effect activities designed to sway public opinion not charitable — Not for courts to grant, deny legitimacy to political views, decide which worthy of support by tax exemption — M.N.R. not estopped from changing position regarding appellant's activities after 4-year lapse, further audit — Provisions of Act relating to charities not so vague as to exceed that constitutionally permissible.

Constitutional law — Charter of Rights — Fundamental freedoms — Appellant's registration as charitable organization revoked on ground not devoting substantially all resources to charitable activity — Appellant arguing denial of tax exemption to those wishing to advocate certain opinions denial of freedom of expression — Income Tax Act not restricting appellant from disseminating any views — Charter, s. 2(b) guarantee of freedom of expression not guarantee of public funding through tax exemptions for propagation of opinions.

Construction of statutes — Vagueness doctrine — Income Tax Act provisions referring to charitable organizations requiring better definition by Parliament, but vagueness not exceeding constitutionally permissible — Courts should not use vagueness doctrine excessively.

Estoppel — Minister auditing appellant, registered charitable organization, in 1989 — Not recommending any change of conduct — Auditing appellant again in 1993, result of which revocation of registration as charitable organization on ground appellant not devoting substantially all resources to charitable activity — Appellant submitting Minister's silence after 1989 audit representation appellant's activities within requirements for charitable organization — Key requirement of estoppel that representation by word or conduct lead representee to act to his detriment — Assuming silence —representation—, appellant not suffering detriment up to July 1993 when —representation— ended with Revenue Canada's letter warning appellant revocation might ensue — Continued to enjoy benefits of registration for further 10 months until revocation decision taken.

This was an appeal from the Minister's revocation of the appellant's registration as a charitable organization on the ground that the appellant was not devoting substantially all of its resources to charitable activity. The appellant was registered as a charitable organization in 1984. Its purposes were to receive, administer and expend funds for charitable and educational purposes (i) to promote the social welfare and defend the human rights of persons born and unborn; (ii) to promote, and to assist the promotion of, natural methods of child creation; and (iii) to educate and assist the education of persons in their obligation to respect and protect human life. The appellant's activities included the conduct of lectures, seminars and conferences and the publication of a variety of literature advocating its points of view. The respondent conducted an audit of the appellant's activities in 1989, but did not recommend that the appellant change its conduct. After a second audit in 1993, the Department advised the appellant that its activities could not be justified under either the advancement of education, or "other purposes beneficial to the community". The letter stated that activities which are designed essentially to sway public opinion on a controversial social issue are not charitable, but political. While recognizing that a charitable organization may carry on ancillary political activities using a limited amount of its resources, the letter stated that the appellant was devoting substantial resources to political activities which were not incidental and ancillary to charitable objects. After considerable correspondence and discussion, the Minister revoked the appellant's charitable organization registration.

The issues were: (1) whether the appellant's activities were educational or beneficial to the

community; (2) whether the Minister applied the wrong test to determine whether the appellant's activities were political and erred in concluding that the appellant was devoting substantial resources to political activities; (3) whether the Minister abused his discretion in revoking the registration; (4) whether the Minister was estopped from revoking the registration because he had previously represented that the appellant's activities were charitable; (5) whether the charitable organization provisions of the *Income Tax Act*, which deny registration as a charitable organization to any organization which engages in the dissemination of information and opinions, were invalid as denying freedom of speech or expression, contrary to Charter, paragraph 2(*b*); and, (6) whether the charitable organization provisions were void for unfairness.

Held, the appeal should be dismissed.

The onus is on an appellant bringing an appeal against revocation of registration to demonstrate that the Minister erred in the conclusions upon which the registration was revoked. The appellant has failed to discharge that onus.

(1) The appellant did not demonstrate that its activities met either of the requirements for the advancement of education i.e. they must be directed toward the formal training of the mind or the improvement of a useful branch of human knowledge. The distribution of literature and the holding of conferences was not carried out in any structured way so as to amount to formal training. Its literature appeared to be predominantly of a tendentious or polemical character that one would not normally associate with the formal training of the mind. Nor did the appellant demonstrate how its activities would amount to the improvement of a useful branch of human knowledge. It did not demonstrate significant research or the systematic development of a body of human knowledge. The material it produced was primarily concerned with the dissemination of a set of opinions on various social issues.

The appellant had also failed to demonstrate a significant error by the Minister with respect to whether the appellant's activities served other purposes beneficial to the community. Activities primarily designed to sway public opinion on social issues are not charitable activities. Most of the appellant's adherents are Roman Catholics who sincerely believe they are advancing principles set out by Pope Paul VI in his *Humanae Vitae* encyclical. Even so, appellant's position on certain issues " such as sex education in Catholic schools " goes against that of the Catholic Bishops. Any determination by the Court as to whether the propagation of such views is beneficial to the community and thus worthy of temporal support through tax exemption would be a political determination and inappropriate for a court to make.

(2) The appellant had not demonstrated that the Minister's assessment that the appellant was devoting a substantial part of its resources to political activity, was incorrect. There is much subjectivity involved in characterizing particular activities as political or non-political, and in quantifying the resources devoted to such activities. The appellant had failed to demonstrate by any systematic analysis that the portion of its resources devoted to political activities were insubstantial. As it appeared that a substantial part of the activities of the charity were indeed devoted to political purposes and, given that the *Income Tax Act*, subject to limited exceptions, requires that all resources of a charitable organization be devoted to charitable activities, it was not demonstrated that the Minister erred in concluding that the appellant was not a charitable organization.

(3) The appellant argued that the fact that the Minister took a different position in 1993 from that in 1989, was *per se* proof of unfairness and an abuse of discretion. There was no basis upon which the Minister was precluded from a change of position after a lapse of four years and the conduct

of a further audit. There is no principle of *stare decisis* in the exercise of the powers of registration and revocation of registration, any more than there is in the matter of assessment where the Minister may accept certain expenses as deductible one year and disallow them in another year. All he is required to do is justify the latter decision if it is appealed.

(4) The doctrine of estoppel did not apply. A key requirement of estoppel is that a representation by word or conduct must lead the representee to act to his detriment. Assuming that there was a "representation" in 1989 by the Minister's silence, the appellant was not led to change its conduct, but continued to do the very same thing it had always been doing. Before any detriment occurred, there was a notice in July 1993 advising it of the concerns of Revenue Canada with the warning that revocation might ensue. The appellant then had ten months before the revocation decision was taken. The appellant therefore did not suffer any detriment up to July 1993 when the "representation" ended with the letter of concern from Revenue Canada. It continued to enjoy the benefits of registration after that warning and even after the termination of the "representation" up to May 1994.

(5) The appellant was in no way restricted from disseminating any views or opinions whatever. The guarantee of freedom of expression in Charter, paragraph 2(*b*) is not a guarantee of public funding through tax exemptions for the propagation of opinions, no matter how good or how sincerely held.

(6) While this area of the law requires better definition by Parliament, the vagueness did not exceed the constitutionally permissible. The Supreme Court of Canada has recently taken a cautious view of the vagueness doctrine and has warned against its excessive use by the courts.

statutes and regulations judicially considered

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], ss. 2(*b*), 15.

Charitable Uses Act 1601 (U.K.), 43 Eliz. I, c. 4.

Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1, ss. 149.1(1) "charitable organization", (6.2), 168(1), 180.

cases judicially considered

applied:

Commissioners of Income Tax v. Pemsel, [1891] A.C. 531 (H.L.); *Bowman v. Secular Society*, [1917] A.C. 406 (H.L.).

considered:

Positive Action Against Pornography v. M.N.R., [1988] 2 F.C. 340; (1988), 49 D.L.R. (4th) 74; [1988] 1 C.T.C. 232; 88 DTC 6186; 29 E.T.R. 92; 83 N.R. 214 (C.A.); *McGovern v. Attorney-General*, [1982] Ch. 321.

referred to:

Briarpatch Inc. v. R., [1996] 2 C.T.C. 94; (1996), 96 DTC 6294; 197 N.R. 229 (F.C.A.); *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606; (1992), 114 N.S.R. (2d) 91; 93 D.L.R. (4th)

36; 313 A.P.R. 91; 74 C.C.C. (3d) 289; 43 C.P.R. (3d) 1; 15 C.R. (4th) 1; 10 C.R.R. (2d) 34; 139 N.R. 241; *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031; (1995), 125 D.L.R. (4th) 385; 99 C.C.C. (3d) 97; 17 C.E.L.R. (N.S.) 129; 183 N.R. 325; *Young v. Young*, [1993] 4 S.C.R. 3; [1993] 8 W.W.R. 513; (1993), 108 D.L.R. (4th) 193; 34 B.C.A.C. 161; 84 B.C.L.R. (2d) 1; 18 C.R.R. (2d) 41; 160 N.R. 1; 49 R.F.L. (3d) 117; 56 W.A.C. 161; *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141; (1993), 108 D.L.R. (4th) 287; 18 C.R.R. (2d) 1; 159 N.R. 241; 58 Q.A.C. 1; 49 R.F.L. (3d) 317.

APPEAL from the revocation of the appellant's registration as a charitable organization on the ground that the appellant was not devoting substantially all of its resources to charitable activity. Appeal dismissed.

counsel:

Arthur B. C. Drache, Q.C. and *David Sherriff-Scott* for appellant.

Roger Leclaire for respondent.

solicitors:

Drache, Burke-Robertson & Buchmayer, Ottawa and *Scott & Aylen*, Ottawa for appellant.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment rendered in English by

Strayer J.A.:

Introduction

This is an appeal from a decision of the Minister of National Revenue of May 26, 1994 whereby the registration of the appellant as a charitable organization was revoked pursuant to subsection 168(1) of the *Income Tax Act* [R.S.C., 1985 (5th Supp.), c. 1] on the grounds that the appellant was not devoting substantially all of its resources to charitable activity. The appeal comes directly to this Court pursuant to a rather peculiar provision of the *Income Tax Act*, section 180, which allows such an appeal and denies both the Tax Court of Canada and the Trial Division of this Court jurisdiction in the matter. By subsection 180(3) the Federal Court of Appeal is to hear and determine such appeals "in a summary way". The record on such an appeal consists of a multitude of documents put in by agreement of the parties. The Court must therefore review the relevant questions of law and fact without the benefit of any findings of fact by a trial court and indeed without the benefit of any sworn evidence.

Facts

The appellant (HLIC) applied for and obtained registration as a charitable organization in 1984. In its application for incorporation it stated its "specific and primary purposes" to be:

. . . to receive, administer and expend funds for charitable and educational purposes in connection with the following:

1. to promote the social welfare and defend the human rights of persons born and unborn.

2. to promote, and to assist the promotion of, natural methods of child creation.

3. to educate, and assist the education of, persons in their obligation to respect and protect innocent human life.

(The remaining objects are essentially descriptive of means to carry out the above.[1])

In subsequent communications the appellant indicated that among its aims and objects would be to protect the unborn, elderly and handicapped, to promote true Christian family values, to encourage chastity, and to teach natural family planning.[2] The appellant confirms that its activities have not changed from the time of its registration as a charitable organization. These activities have largely included the conduct of lectures, seminars and conferences and the publication of a variety of literature advocating its points of view.

In 1989, apparently as a result of the appellant sending a postcard to all members of Parliament depicting a 20 to 22-week old aborted fetus, the respondent conducted an audit of the appellant's activities. It appears that this audit was somewhat restricted in its scope, having been triggered by the postcard incident which apparently occurred in 1988. The audit was extended to cover 1989 and to include a "march for life" on Parliament Hill in Ottawa, organized by the appellant, in January of that year. That audit was completed in December 1989 without any recommendations for action by the Minister or for the appellant to change its conduct.

A second audit was carried out covering the years 1990, 1991, and 1992, this audit being completed by January 11, 1993. On July 16, 1993 an officer of Revenue Canada sent a letter to the appellant "setting out the reasons why the Department is concerned with certain activities of HLIC."[3] The letter advised that the Department had reviewed the activities of the appellant to see if they could be justified under either of the two possible recognized categories of charity possibly relevant: namely the advancement of education, or "other purposes beneficial to the community". In analysing the educational issue, the letter stated in part as follows:

In certain publications and material disseminated by HLIC, it is clear its purpose is to promote an anti-abortion attitude of mind. In addition, we see HLIC promoting its own interpretation of other controversial issues such as sex education in schools, homosexuality, pornography, universal day care, contraception, sterilization, sexual permissiveness and "planned" parenthood, euthanasia, reproductive technology, over-population, and the "new age" movement. This is evidenced when we review the following items:

1. Publications distributed by HLIC such as "Human Life International Reports" and "Special Canadian Reports".

2. Brochures and advertisements seeking support for its "pro-life" position.

3. Cassette tapes of speeches of Dr. Nathanson and speeches at annual conferences.

4. Literature disseminated by HLIC listed in the "Pro-life/Family Catalog" and other literature such as "The American Holocaust" and posters and postcards designed to shock the reader.

All of the [*sic*] these materials are strongly worded to promote HLIC's views on the abortion issue and other controversial social issues.

Thus an organization such as HLIC which espouses a specific cause and seeks to sway the public to its way of thinking, would not qualify as charitable under the category of advancing education.

On the issue of "other purposes beneficial to the community" the letter stated in part:

There is no case law, to our knowledge, that would support a finding that promoting an organization's position on such issues as abortion, sex education in schools, and the other issues mentioned above, is charitable. In fact, the courts have found that purposes that are related to promoting one side of a controversial issue or cause are not charitable at law.

In addition, many of HLIC's positions go well beyond what is considered as being beneficial to the community. A publicity campaign that persuades the public to reject the values and products of an industry or organization is not considered a charitable activity. HLIC's positions include those which discourage support of the following organizations:

a) UNICEF

b) Planned Parenthood

c) The United Way

d) Petro Canada

e) Proctor and Gamble products

f) Picketing abortion clinics for the purpose of putting them out of business

Based on our review of the relevant jurisprudence, it would appear that HLIC does not qualify under the fourth head.

The letter of July 16, 1993 went on to consider whether the appellant was engaged in political activities. It stated the following proposition:

The courts have established that activities which are designed essentially to sway public opinion on a controversial social issue are not charitable, but are political in the sense understood at law.

While recognizing that a charitable organization may carry on ancillary political activities using a limited amount of its resources, the letter went on to say:

It appears on the contrary that HLIC is devoting substantial resources, which includes financial, material and human, on political activities which are not incidental and ancillary to charitable objects. That is, purposes and activities that are directed at legislative change or change in public policy or attitudes are considered political in nature, and not charitable at law. For example, sending "shock value" postcards to federal Members of Parliament, helping to organize the "March for Life" on Parliament Hill, and various publications, brochures and advertisements promoting HLIC's views are considered as political activities.

The letter then concluded by indicating that the Minister was considering revoking the appellant's registration but invited it to submit representations by September 20, 1993 if it disagreed with the Department's view as to the nature of its activities. Apparently there was considerable correspondence and discussions between the appellant and Revenue Canada but ultimately on May 26, 1994 a decision was rendered on behalf of the Minister revoking the appellant's registration.[4] This letter stated that on registration the appellant had indicated it would be advancing education and good health. According to the letter, the review by Revenue Canada led it to conclude that the appellant's activities do not fall under these or any other recognized

categories of charity for the purposes of the *Income Tax Act*. The letter goes on to characterize the activities of the appellant as being essentially political activities which are not charitable, adopting the following language.

The courts have established that activities which are designed essentially to sway public opinion on a controversial social issue are not charitable, but are political in the sense understood by law. An organization may devote a limited amount of its resources including volunteer help, to political activity of a non-partisan nature provided that such activity is both incidental and ancillary to an organization's objects. Our review has concluded that HLIC is devoting substantial resources on political activities which are not incidental and ancillary to charitable objects.

The letter also referred to an earlier letter from Revenue Canada of April 18, 1994.[5] That letter referred to discussions held with representatives of the appellant in which the respondent had explained in detail its views of the appellant's political activities, described as follows:

These activities include articles in your newsletters, literature, conference activities, and various publications, brochures and advertisements, which we perceive are intended to change public attitudes and beliefs.

In its appeal, the appellant raises several issues. In its memorandum of fact and law it contends that its activities are educational and thus charitable. In written and oral argument it contends that its activities are beneficial to the community in a charitable sense, and that the Minister erred in fact and law in determining that it was devoting substantial resources to political activity. As part of this argument the appellant rejects the Minister's view that, according to the jurisprudence, activities "designed essentially to sway public opinion on a controversial social issue" are political and not charitable. The appellant does not deny that some of its activities are political, but says these are only incidental to its charitable objects and activities. Further the appellant argues that the Minister abused his discretion in revoking the registration, and that he was estopped from revoking the registration because he had previously represented that the appellant's activities were charitable. It contends that, if the *Income Tax Act* and the jurisprudence interpreting it denies registration as a charitable organization to any organization which engages in the dissemination of information and opinions, then it is invalid as denying freedom of speech or expression as guaranteed by paragraph 2(*b*) of the *Canadian Charter of Rights and Freedoms* [being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]]. In oral submissions, the appellant also contends that the charitable organizations provisions of the *Income Tax Act* are void for vagueness.

After hearing the appellant's argument the Court advised counsel for the respondent that we did not need to hear him on the issues of abuse of discretion, estoppel, and the alleged infringement of the Charter. Our reasons for rejecting these arguments will be explained below.

Analysis

While the *Income Tax Act* provides for the registration of charitable organizations and confers on them the direct advantage of tax exemption and the indirect advantage of tax credits for those who contribute to them, it nowhere defines the meaning of "charity".[6] Such principles for identifying charities as do exist are of English origin, are well known and frequently cited in the jurisprudence. In *Commissioners of Income Tax v. Pemsel*[7] the House of Lords defined charitable activities to include the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community not falling under the preceding heads. It is commonly said that the fourth category, "purposes beneficial to the community", being vague,

can be given more precision by reference to a 1601 English statute passed during the reign of Elizabeth I.[8] One may observe in passing that that statute does not purport to give an exhaustive definition of charity nor was that its purpose, and one may well question its relevance to Canadian society some four centuries later. This Court has however been obliged to develop principles appropriate for Canada particularly with respect to the open-ended fourth category of "purposes beneficial to the community" and it is this jurisprudence to which we must give primary consideration. It remains, nevertheless, an area crying out for clarification through Canadian legislation for the guidance of taxpayers, administrators, and the courts.

I am satisfied that the onus is on an appellant bringing an appeal against revocation of registration to this Court under section 180 to demonstrate that the Minister erred in the conclusions upon which the registration was revoked. This position is the most consistent with the general principle of income tax law that, once the Minister has made an assessment, it is for the taxpayer to demonstrate that the assessment is incorrect, it being assumed that the taxpayer is in the best position to provide information about his own affairs. In my view the appellant has failed to discharge this onus in the present case.

With respect to whether its activities are for the advancement of education, the appellant did not press this issue in argument and I think it is without merit. It is well established in the jurisprudence of this Court that, to be an activity for the advancement of education, it must be directed toward the formal training of the mind or the improvement of a useful branch of human knowledge.[9] The appellant has not demonstrated that its activities meet either of these requirements. The distribution of literature and the holding of conferences is not carried out in any structured way so as to amount to formal training. Moreover, its literature appears to be predominantly of a tendentious or polemical character that one would not normally associate with the formal training of the mind. Nor has the appellant demonstrated how its activities would amount to the improvement of a useful branch of human knowledge. It has not demonstrated significant research or the systematic development of a body of human knowledge. The impression one gets from the material is that it is primarily concerned with the dissemination of a set of opinions on various social issues and the appellant has not convincingly demonstrated anything to the contrary.

With respect to the central question of whether the appellant's activities essentially serve other purposes beneficial to the community within the fourth category of charity, again the appellant has failed to demonstrate a significant error on the part of the Minister. I think it is fair to say that the appellant's arguments on this issue are twofold. First it is argued that the Minister applied the wrong legal test as to what is a political activity and, secondly, he erred in fact and law in concluding that the appellant is devoting substantial resources to political activities and not simply engaged incidentally in political activities ancillary to its charitable objects.

With respect to the legal test employed by the Minister, it is stated in his decision which is under attack, as quoted above, that according to the jurisprudence activities designed essentially to sway public opinion on a controversial social issue are not charitable but are political. Counsel for the respondent agreed that there was no jurisprudence precisely saying that but he felt it to be a fair interpolation of the existing jurisprudence. I believe that the jurisprudence generally supports the proposition that activities primarily designed to sway public opinion on social issues are not charitable activities. One need go no farther than the decision of this Court in *Positive Action Against Pornography v. M.N.R.* of 1988.[10] The organization there proposed to carry out activities similar to those of the appellant. It intended to distribute "educational material" including an information kit which this Court subsequently found to contain "a rather strong anti-pornography

bias". The Minister refused registration of the organization on the basis that its objects were not charitable. The organization appealed to this Court arguing that its purposes were either educational or otherwise beneficial to the community in a charitable sense. Stone J.A. writing for the Court rejected the argument based on educational purpose for the same reasons as I have given above in respect of the present case. With respect to the claim that these activities were beneficial to the community Stone J.A. instead characterized them as political. It is true that the material proposed for distribution in that case more clearly included the advocacy of new legislation and a new role for the state in the control of pornography. For this reason Stone J.A. was able to bring it within the description of political purposes set out by the English Chancery Division in *McGovern v. Attorney-General*[11] where it was said that trusts for political purposes:

. . . include, inter alia, trusts of which a direct and principal purpose is either (i) to further the interests of a particular political party; or (ii) to procure changes in the laws of this country; or (iii) to procure changes in the laws of a foreign country; or (iv) to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or (v) to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.

The appellant argues that it does not come within any of the categories described in *McGovern*. However it must be noted that the *McGovern* judgment specifically did not purport to give an exhaustive definition of political purposes saying that they would "include, *inter alia*" the items as set out. While in the *Positive Action Against Pornography* case the appellant argued that, since there was a general consensus against pornography, its efforts to have tighter controls adopted would accord with general support and therefore was in the public interest, Stone J.A. rejected the idea that this could constitute a test applicable by the courts to determine whether an activity is for the general benefit. In doing so he quoted [at page 354] Lord Parker of Waddington in *Bowman v. Secular Society*[12] where he said:

. . . the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.

The same rationale leads me to conclude that this kind of advocacy of opinions on various important social issues can never be determined by a court to be for a purpose beneficial to the community. Courts should not be called upon to make such decisions as it involves granting or denying legitimacy to what are essentially political views: namely what are the proper forms of conduct, though not mandated by present law, to be urged on other members of the community?

It must always be kept in mind that the fourth category of charitable activities, as stated in *Pemsel*,[13] is those "for other purposes beneficial for the community, not falling under any of the preceding heads" (emphasis added). Thus the mere dissemination of opinions that are not found to be for the advancement of education or religion (the latter was not even invoked in support by the appellant here) must be justified under the fourth category if at all as having some beneficial value that can be ascertained by the Minister and by this Court on appeal. But how can we judge which are the views beneficial to society whose distribution merits the name of charity? I have no doubt that the views espoused by adherents of the appellant are sincerely held and for the most part are regarded by them as matters of faith. It is not in dispute that the majority are Roman Catholics and that they believe they are advancing the principles enunciated by Pope Paul VI in his 1968 encyclical *Humanae Vitae* . Yet the Minister's audit states, and this has not been disputed, that the positions of the appellant on sex education in Catholic schools is at variance with the program endorsed by Catholic Bishops and that its interpretation of *Humanae Vitae* is not

entirely in accord with that of many Bishops.[14] Any determination by this Court as to whether the propagation of such views is beneficial to the community and thus worthy of temporal support through tax exemption would be essentially a political determination and is not appropriate for a court to make.

With respect to the predominantly factual question of whether the appellant is devoting a substantial part of its resources to this kind of political activity, the appellant has not been able to demonstrate that the Minister's assessment was incorrect. Obviously there is much subjectivity involved in characterizing particular activities as political or non-political and in quantifying the resources devoted to such activities. While counsel for the appellant has shared with us his own disagreements with the conclusions of the Minister's officials, he has not by any equally systematic analysis demonstrated to us that in fact the resources devoted to political activities are insubstantial.

Accordingly as it appears that a substantial part of the activities of the charity are being devoted to political purposes and, subject to limited exceptions, the *Income Tax Act* requires that all resources of a charitable organization be devoted to charitable activities,[15] it is not demonstrated that the Minister erred in concluding that the appellant is not a charitable organization.

On the issue of an unfair exercise of discretion, the unfairness is said to lie in the fact that in 1989 after an audit Revenue Canada raised no problems with the appellant, but after a further audit it concluded in 1993 that the appellant's activities did not comply with the requirements for a charitable organization. As I understand the argument, it is that the mere fact that the Minister took a different position in 1993 from that in 1989, notwithstanding a further audit, is *per se* proof of unfairness and an abuse of discretion. I can find no basis upon which the Minister is precluded from a change of position after a lapse of four years and the conduct of a further audit. There is no principle of *stare decisis* in the exercise of the powers of registration and revocation of registration, any more than there is in the matter of assessment where a Minister may for example accept certain expenses as deductible as business expenses one year and on reflection disallow them in another year. All he is required to do is justify the latter decision if it is appealed.

Similarly the appellant makes a rather surprising argument based on estoppel. As I understand it, it is the position of the appellant that the Minister by his silence after the 1989 audit, i.e., by not calling upon the appellant to make changes in its activities or risk revocation, represented that what the appellant was doing was within the requirements for a charitable organization. Therefore the appellant was led, to its detriment, to continue doing what it had always been doing and this led, in turn, to the Minister using that continued activity as a basis for revocation of registration. Putting aside any issues as to estoppel of the Crown or as to whether any such "representations" might have been of law and not of fact, it is obvious that the doctrine of estoppel can be of no help to the appellant. A key requirement of estoppel is that a representation by word or conduct must lead the representee to act to his detriment. What detriment did the appellant suffer, assuming that there was a "representation" in 1989 by silence? The appellant was not led to change its conduct but continued to do the very same thing it had always been doing. Before any detriment was visited upon it there was a notice in July 1993 advising it of the concerns of Revenue Canada with the warning that revocation might ensue. The appellant then had some ten months available for communications and discussions with Revenue Canada before the revocation decision was taken. That revocation decision was not retroactive but would take effect from the time of the decision. The appellant therefore did not suffer any detriment with respect to the period up to July 1993 when the "representation" must really be taken to have ended with the letter of concern from Revenue Canada. Indeed it continued to enjoy the benefits of registration even after that warning

and even after the termination of the "representation" right up to May 1994.

With respect to the Charter argument based on alleged infringement of freedom of expression, the basic premise of the appellant is untenable. Essentially its argument is that a denial of tax exemption to those wishing to advocate certain opinions is a denial of freedom of expression on this basis. On this premise it would be equally arguable that anyone who wishes the psychic satisfaction of having his personal views pressed on his fellow citizens is constitutionally entitled to a tax credit for any money he contributes for this purpose. The appellant is in no way restricted by the *Income Tax Act* from disseminating any views or opinions whatever. The guarantee of freedom of expression in paragraph 2(*b*

Finally the appellant argued orally (although the matter was not identified in its factum) that the provisions of the Act referring to charitable organizations and to a limitation on political activities are void for vagueness. I would heartily agree that this area of the law requires better definition by Parliament which is the body in the best position to determine what kinds of activity should be encouraged in contemporary Canada as charitable and thus tax exempt. But I am not prepared to say that the vagueness here is of a degree in excess of the constitutionally permissible. Suffice it to say that recent Supreme Court jurisprudence has taken a cautious view of the vagueness doctrine and has warned against its excessive use by the courts.[16] To the extent that the vagueness argument here pertains to the particular danger to freedom of expression which a vague statute might create, for the reasons given above I do not believe that the system of tax exemption for charities is relevant to freedom of expression in the circumstances of this case.

Disposition

The appeal should therefore be dismissed. This being a statutory appeal and no special reasons having been demonstrated for awarding costs, there should be no costs.

Isaac C.J.: I agree.

Robertson J.A.: I agree.

[1] Vol. I, A.B., at p. 76.

[2] Vol. I, A.B., at pp. 56-62.

[3] Vol. I, A.B., at pp. 28-35.

[4] Vol. I, A.B., at pp. 1-4.

[5] Vol. I, A.B., at pp. 5-8.

[6] S. 149.1(6.2) indirectly indicates that political activities are not charitable. However it does not define "political activities".

[7] [1891] A.C. 531 (H.L.).

[8] [*Charitable Uses Act 1601*] 43 Eliz. I, c. 4.

[9] See e.g. *Positive Action Against Pornography v. M.N.R.*, [1988] 2 F.C. 340 (C.A.), at p. 348;

Briarpatch Inc. v. R., [1996] 2 C.T.C. 94 (F.C.A.), at p. 97.

[10] *Ibid.*

[11] [1982] Ch. 321, at p. 340.

[12] [1917] A.C. 406 (H.L.), at p. 442.

[13] Supra, note 7.

[14] Vol. I, A.B., at p. 91. See also e.g. *ibid*, at p. 42; Vol. II, A.B., at pp. 240, 279, 283-287, 332-336; Vol. IV, A.B., at p. 788.

[15] S. 149.1(1), definition of "charitable organization".

[16] See e.g. *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606, at p. 643. See also *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031; *Young v. Young*, [1993] 4 S.C.R. 3; *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141.