Date: 20020301

Docket: A-357-00

Neutral citation: 2002 FCA 72

CORAM: ROTHSTEIN J.A.

SHARLOW J.A.

MALONE J.A.

BETWEEN:

THE CANADIAN COMMITTEE FOR THE TEL AVIV FOUNDATION

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on February 19, 2002.

Judgment delivered at Ottawa, Ontario, on March 1, 2002.

REASONS FOR JUDGMENT BY: MALONE J.A.

CONCURRED IN BY: ROTHSTEIN J.A.

SHARLOW J.A.

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REASONS FOR JUDGMENT

MALONE J.A.

INTRODUCTION

[1] This is a statutory appeal of a decision of the Minister of National Revenue (the "Minister") to notify The Canadian Committee for the Tel Aviv Foundation (the "Committee") of his intention to revoke the Committee's registration as a charitable organization pursuant to section 168 of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 (the "Act"). The intention to revoke arose as the result of the Minister's audit of the Committee's 1997 fiscal year ("the 1997 Audit").

[2] A charity that is registered under the Act has a number of advantages over unregistered organizations. One advantage is that a registered charity is exempt from tax. The other advantage, which may be more important than the tax exemption, is that those who make gifts to a registered charity are entitled to tax relief, provided the charity issues a receipt in the prescribed form.

[3] The situations in which a charity's registration may be revoked are set out in subsection 168(1) of the Act, the relevant portions of which read as follows:

168. (1) Notice of intention to revoke registration -- Where a registered charity or a registered Canadian amateur athletic association	168. (1) Avis d'intention de révoquer l'enregistrement -- Le ministre peut, par lettre recommandée, aviser un organisme de bienfaisance enregistré ou une association canadienne enregistrée de sport amateur de son intention de révoquer l'enregistrement lorsque l'organisme de bienfaisance enregistré ou l'association canadienne enregistrée de sport amateur, selon le cas_:
(b) ceases to comply with the requirements of this Act for its registration as such,	b)cesse de se conformer aux exigences de la présente loi relatives à son enregistrement comme telle;
(c) fails to file an information return as and when required under this Act or a regulation,	c) omet de présenter une déclaration renfermant des renseignements, selon les modalités et dans les délais prévus par la présente loi ou par son règlement;
(d)issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,	d)délivre un reçu relativement à un don sans respecter les dispositions de la présente loi et de son règlement ou contenant des renseignements faux;
...	...
the Minister may, by registered mail, give notice to the registered charity	

or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

[4] The requirements of registration referred to in paragraph 168(1)(b) depend on whether the charity is a "charitable organization" or a "charitable foundation." Broadly speaking, a charitable organization must carry on charitable activities itself, while a charitable foundation may raise funds for other organizations that meet the definition of "qualified donee."

[5] The list of "qualified donees" includes registered charities. Generally, no foreign organization will be a "qualified donee" unless it is a university that meets certain conditions, or a foreign charitable organization to which Canada has made a gift during a specified period of time. This case involves a charitable organization. The grounds for de-registration of a charitable organization are stated as follows in subsection 149.1(2):

(2) The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization	(2) Le ministre peut, de la façon prévue à l'article 168, révoquer l'enregistrement d'une oeuvre de bienfaisance pour l'un ou l'autre des motifs énumérés au paragraphe 168(1), ou encore si l'oeuvre_:
(a) carries on a business that is not a related business of that charity; or	a) soit exerce une activité commerciale qui n'est pas une activité commerciale complémentaire de cet organisme de bienfaisance;
(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of	b) soit ne dépense pas au cours d'une année d'imposition, pour les activités de bienfaisance qu'elle mène elle-même ou par des dons à des donataires reconnus, des sommes don't le total est au moins égal au total des montants suivants_:
(i) the amount that would be the value of A for the year, and	(i)le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A de la formule figurant dans la définition de « _contingent des versements_ » au paragraphe (1) si elle était une fondation de bienfaisance,
(ii) the amount that would be the value of A.1 for the year,	(ii) *le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A.1 de cette formule si elle était une fondation de bienfaisance.
in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.	

[6] As the detailed recital of facts below will demonstrate, the Committee was established and represented itself as a charitable organization, which meant that it was required to carry on its charitable activities itself. Raising funds for another organization would not entitle the Committee to

registration as a charitable organization. Nor would the Committee qualify as a charitable foundation unless the intended recipient of the funds raised is a "qualified donee" as defined in the Act.

FACTS

[7] The Committee was registered as a charity in 1985. Its charitable objectives relate to the promotion of education and relief of poverty and sickness in Tel Aviv, Israel. Its registration was predicated on its representations to the Minister that its activities would be carried out through The Tel Aviv Foundation, its agent in Tel Aviv, pursuant to a written agency agreement dated July 10, 1986 ("the Agency Agreement"). It is common ground that a charitable organization is considered to be carrying on its own activities to the extent that it acts through an agent.

[8] The Minister had audited the Committee on two earlier occasions before the 1997 Audit. An audit for its 1990 fiscal year ("the 1990 Audit") revealed several instances of non-compliance with the Act, including the lack of documents to support its overseas expenditures, irregularities surrounding preparation and issue of a proper T4 for its president, and improper payroll deductions for its employees. The Minister gave the Committee a written explanation of the instances of non-compliance as well as directions as to how to comply with the Act and its regulations. The 1990 Audit did not lead to any indication by the Minister that the Committee's status as a registered charity was in question.

[9] The Committee was again audited in 1995 for its fiscal year ending December 31, 1993 ("the 1993 Audit"). The Minister advised the Committee in writing on March 26, 1996 that it was contravening the provisions of the Act in eleven instances, several of which are germane to the present appeal. They are listed in paragraph [11], *infra*. In his letter, the Minister warned that he could give notice of his intention to revoke the Committee's registration, pursuant to paragraph 168(1)(c) of the Act, if the Committee failed to comply with the requirements of the Act and its regulations. The Minister gave the Committee 30 days to make representations as to why revocation should not occur, subsequent to which the Director of Charities would decide whether or not to proceed with the issuance of a notice of intention to revoke.

[10] The Committee responded to the Minister by letter of July 19, 1996, explaining that its agent had undergone a complete change in management since the Agency Agreement had been signed and was not aware of the reporting requirements in that agreement. Further, the Committee made the following undertakings to the Minister:

Both the Canadian charity [the Committee] and the agent have committed to conform strictly to the requirements of Revenue Canada, including the specific provisions of the Agency Agreement, which is still in force and effect ("1996 Undertaking").

On the basis of the 1996 Undertaking, the Minister informed the Committee, by letter dated February 10, 1997, that the charitable organization status of the Committee would remain unchanged.

[11] The 1997 Audit took place in 1999. The Minister advised the Committee in writing on December 15, 1999, that he continued to have serious concerns about the repeat of deficiencies noted in the 1993 Audit. The Minister identified the seven deficiencies, namely:

a. the Committee had again violated clauses 7 - 10 of the Agency Agreement in that it maintained little control over the funds disbursed to and by its agent;

b. details were not provided regarding $20,000 expended by the agent on scholarships;

c. the Committee was unable to demonstrate adherence to a system of continuous and comprehensive reporting as required by the Agency Agreement;

d. the Committee's funds did not remain apart from those of its representative and the Committee's role in any project or endeavour was not separately identifiable as its own charitable activity;

e. donation receipts issued by the Committee did not comply with the Regulation 3501 and IT-110R3 as follows:

i. the receipts did not show the full address of the Committee as recorded with Revenue Canada;

ii. spoiled receipts were neither marked cancelled nor retained by the Committee; and

iii. donation receipts could not be reconciled with T3010 information returns and financial statements;

f. the Committee improperly completed its T3010 information return in that many of the items reported were incorrectly identified or omitted; and

g. the Committee paid fees to an entertainer, but no T4A slip was issued and no invoice was provided.

[12] Because of these deficiencies and the Minister's perception that the Committee has failed to observe its 1996 Undertaking, the Minister advised the Committee that there were grounds for revoking its charitable status. The Minister also advised of the consequences of de-registration, and gave the Committee 30 days to make representations as to why its status should not be revoked. The Committee was similarly advised that subsequent to that date, the Director of Charities Division would decide whether or not to proceed with the issuance of a notice of intention to revoke its charitable registration. The deadline was later extended to February 28, 2000 and the Committee responded by letter of February 25, 2000 .

[13] The Committee attempted to explain its situation and address the Minister's concerns. It also asked the Minister to clarify its concerns about the spoiled receipts and the Information Return. The Minister was not satisfied with the Committee's response and, by registered letter dated April 27, 2000, issued a notice of intention to revoke the charitable status of the Committee. In his letter of notification, the Minister advised the Committee that it had carefully reviewed the representations, including the Committee's letter, and concluded that the representations did not provide sufficient reason why the Committee's charitable status should not be revoked. The Minister gave extensive reasons for revocation in his written notice of intention to revoke dated April 27, 2000, and may be summarized as follows:

1. the agent did not demonstrate that it maintained detailed records of all amounts received from or for the account of the Committee and all expenditures incurred on behalf of the Committee in accordance with paragraph 8 of the Agency Agreement;

2. the separate bank account kept by the agent appeared to be a transfer account, i.e., money was not paid directly to suppliers, but was funnelled to the agent for disbursement such that the Committee did not exercise direction and control over the agent's expenditures;

3. the agent failed to provide unaudited quarterly statements and annual reports as required by paragraph 9 of the Agency Agreement;

4. the Committee's statement that its agent kept it currently and fully informed of its activities, pursuant to paragraph 10 of the Agency Agreement, was not supported by any documentary evidence;

5. the report in support of the Committee's assertion that the agent had no discretion whatsoever as to the expenditure of funds, and that the Charity hade direction and control over use of the funds, was not available at the time of the audit, contrary to paragraph 9 of the Agency Agreement;

6. the Committee failed to demonstrate that it authorized the projects and the amounts for the projects for which it claimed to have provided funds, contrary to paragraphs 5 and 6 of the Agency Agreement;

7. the agent's brochure mentioned specific Canadian donors for projects claimed as Committee projects, which reinforced the Minister's view that the Committee was acting as a conduit by which Canadian donors may funnel funds to overseas donees, i.e., that the donor or agent, but not the Committee, was in control of where and how funds were disbursed and contributions recognized;

8. the $20,000 grant to the Air Force Museum in the city of Beer Sheva was reported in the Committee's records as ‘scholarships,' which was misleading, and concealed the fact that the agent's activities occurred outside the city of Tel Aviv;

9. the Committee failed to take corrective measures to ensure that that spoiled donation receipts were not marked as cancelled or retained by the Committee, and further that donation receipts could not be reconciled with the Committee's T3010 information return and financial statements;

10. the Committee failed to address the discrepancies noted by the Minister with regards to its T3010 information return; and

11. salary paid to an employee was not reported on a T4 slip, similar to what had occurred in the previous audit.

ISSUES

[14] The Committee now appeals pursuant to subsections 172(3) and 180(1) of the Act on the following grounds:

a. Whether the legislative scheme for de-registration, insofar as it fails to provide a hearing, violates the Canadian *Bill of Rights*, thereby rendering section 168 of the Act inoperative in this case;

b. Whether the Minister's actions in administrating section 168 denied procedural fairness and the right to a fair hearing as provided under the *Bill of Rights*;

c. Whether the burden of proof for establishing the facts justifying de-registration is on the Minister, and if so, has the Minister met that burden;

d. Whether the Minister erred in considering the Agency Agreement between the Committee and the Tel Aviv Foundation and whether Minister acted unfairly in revoking the charitable status of the Committee;

e. Whether the Minister erred in law in concluding that the Committee ceased to comply with the requirements of the Act; and

f. Whether the Minister erred in making the failure to issue a T4 or T4A receipt a ground for de-registration, thereby taking irrelevant considerations into account.

ANALYSIS

Issue 1: Whether the legislative scheme for de-registration, insofar as it fails to provide a hearing, violates the Canadian Bill of Rights, thereby rendering section 168 of the Act inoperative in this case

[15] The Committee argues that the revocation of charitable status has such a serious impact on a charity that subsection 2(e) of the *Bill of Rights* is engaged. Subsection 2(e) of the *Bill of Rights* provides that no law of Canada shall be construed or applied so as to deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights or obligations. The Committee also asserts that the common law requirement placed on the Minister by this Court in *Re Renaissance International v. Minister of National Revenue*, [1983] 1 F.C. 860 (FCA), i.e., to outline the nature of the allegations in support of a de-registration and to merely give a charity the opportunity to respond in writing, does not go far enough. According to the Committee, such a requirement does not satisfy the principles of fundamental justice under the *Bill of Rights.* The Committee argues that charities should therefore be given an opportunity for full discovery and disclosure of the Minister's files, an oral hearing and cross-examination of the auditor on all materials upon which the Minister relies to invoke de-registration.

[16] In *Re Singh and Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, Beetz J. stated that the principles of natural justice do not impose the necessity of an oral hearing in all cases. He stated at page 229 that "[t]he most important factors in determining the procedural content of fundamental justice in a given case are the nature of the legal rights at issue and the severity of the consequences to the individuals concerned". He cited the following passage from *Selvarajan v. Race Relations Board*, [1976] 1 All E.R. 12, per Lord Denning, at p. 19:

... that which fairness requires depends on the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. [emphasis added]

[17] It seems clear that Parliament intended that statutory appeals involving charities should not involve rigid rules and cumbersome procedures. Section 168, reproduced at paragraph [3], *supra*, is silent on matters of procedure. Subsection 180(1) outlines an appeal process to this Court; a proceeding limited by subsection 180(3) to a summary hearing and determination. Equally telling is subsection 180(2), which states that neither the Tax Court of Canada nor the Federal Court - Trial Division have jurisdiction over any proceeding involving such statutory appeals.

[18] Against this statutory background, this Court was required in *Re Renaissance International, supra,* to determine what level of disclosure and response was appropriate in revocation cases. It held that the rules of procedural fairness and natural justice require only that the Minister give the charity an opportunity to respond to the allegations against it before sending a notice of intention to revoke. In that case, the Minister had issued a notice of intention to revoke without giving the charity any notice of the preceding investigation or of the allegations against the charity, nor was the charity given an opportunity to challenge those allegations or be heard by the Minister in response.

[19] While it is true that the consequences of de-registration for the Committee are severe, section 168 does not deprive the Committee of its status without the benefit of reasonable procedural protections. Instead, following *Re Renaissance International, supra*, it opens an exchange by which the Committee becomes aware of the case it has to meet, and is given an opportunity to reply. In this case, the Committee was informed during the 1990 and 1993 Audits that it had failed to comply with the Act and was given an opportunity to respond. In answer to the 1993 Audit, and knowing that its registration was in jeopardy, the Committee provided its 1996 Undertaking which prevented de-registration at that time; proof positive that written submissions can be effective in preventing de-registration under section 168.

[20] The same procedure was again followed in the 1997 Audit, with extra time being provided to the Committee to fashion its response. In my analysis, given the detailed exchange of written submissions during the 1997 Audit, there is no need for either an oral hearing or cross-examination of the auditor. In oral argument, counsel for the Committee could not identify any disadvantages without such procedures. Specifically, counsel could neither point to any of the auditor's factual assumptions which could have been contradicted in cross-examination, nor demonstrate how the Committee's submissions would have benefited from an oral hearing. Consequently, there has been no violation of subsection 2(e) of the *Bill of Rights* in this case.

Issue 2: Whether the Minister's actions in administrating section 168 denied procedural fairness and the right to a fair hearing as provided under the Bill of Rights

[21] The Committee argues that the Minister violated the *Bill of Rights* insofar as he failed to disclose internal audit reports and working papers relied upon in reaching his decision to revoke. The Committee relies on *Suresh v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 1, for the proposition that the Minister has a duty to disclose all relevant documents and information, such that the Committee may meaningfully respond. *Suresh* was decided in the context of a decision affecting a refugee whose right to life, liberty and security of the person was potentially at risk because he was about to be deported to the country from he had sought refuge.

[22] I am prepared to assume, without deciding, that under subsection 2(e) of the *Bill of Rights*, a somewhat similar standard of procedural protection could apply to charities at risk of de-registration. Certainly that would be consistent with the decision of this Court in *Re Renaissance International*, although in that case the *Bill of Rights* was not specifically pleaded.

[23] However, in *Ahani v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 2; [2002] S.C.J. No. 4 (QL), which was decided on the same day as *Suresh*, the Supreme Court of Canada held that the failure to adhere to the procedural protections mandated by *Suresh* is not fatal to an administrative decision that engages section 7 of the *Charter*, provided that the subject of the decision is not prejudiced. Applying *Ahani* to the present context, the substantive test is whether the Committee was fully informed of the case to be met and was given a full opportunity to respond.

[24] During oral argument, counsel for the Committee was unable to point to any information within the audit reports and working papers that had not already been provided by the Minister. Counsel for the Committee could not explain how its submissions would have differed had the audit reports and working papers been disclosed. Further, at no time did the Committee or its counsel request such material. According to counsel for the Minister such requests are somewhat routine and disclosure would not have been an issue in advance of the Committee's written response. Accordingly, in my view, there is no evidence that the Committee was either unaware of the case against it or was unable to respond meaningfully and therefore, the Minister's administration of the Act has not contravened the *Bill of Rights*.

Issue 3: Whether the burden of proof for establishing the facts justifying de-registration is on the Minister, and if so, has the Minister met that burden

[25] The Committee asserts that the burden of proof is on the Minister to prove the facts supporting revocation since de-registration would result in the imposition of a 100% penalty tax on all the assets of the Committee, pursuant to section 188 of the Act, and that subsection 163(3) of the Act provides that the burden of proof on any appeal in respect of a penalty lies on the Minister. I note, however, that subsection 163(3) is restricted in application to penalties imposed under sections 163 and 163.2 only. The subsection cannot have the application proposed by the Committee, given that the "penalty" alleged arises by operation of section 188.

[26] The Minister responds that section 188 imposes a tax, not a penalty and that this Court has stated in *Human Life International in Canada v. The Minister of National Revenue*, [1998] 3 F.C. 202

(FCA) that the onus is on a charity to demonstrate that a Minister erred with respect to a decision to de-register. Strayer J.A., for the Court, stated at p. 215 that:

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. [emphasis added]

[27] I am not persuaded that the debate raised in this case would be advanced by determining whether section 188 imposes a tax or a penalty. It is obvious that the consequences of de-registration are substantial and onerous. However, I am unable to conceive of any valid reason in this case to depart from Strayer J.A.'s analysis in *Human Life, supra*, that the onus is on the Committee to prove that its charitable organization status should not be revoked. Given that Parliament has directed a summary procedure with jurisdiction solely in the Federal Court of Appeal, the process is much like an application for judicial review, as opposed to an appeal from a lower court, with the correlative benefit of sworn testimony and written reasons. Collectively, these features of this statutory appeal process support the conclusions of Strayer J.A. relative to the burden of proof.

[28] Regardless of the party on whom the burden may lie initially, I cannot ignore the fact that the Committee granted to the Minister its 1996 Undertaking to "conform strictly to the requirements of Revenue Canada, including the specific provisions of the Agency Agreement." Accordingly, in my view, the requirement to now demonstrate compliance with that Undertaking, by meeting the burden of proof, cannot be said to work an unreasonable or unjust hardship on the Committee. I am satisfied that the burden is on the Committee in this case, and it must therefore convince this Court that the Minister erred in issuing his April 27, 2000 notice of intention to revoke.

Issue 4: Whether the Minister erred in considering the Agency Agreement between the Committee and the Tel Aviv Foundation and whether Minister acted unfairly in revoking the charitable status of the Committee

[29] The Committee asserts that the Minister erred insofar as he relied on non-compliance with the Agency Agreement to support revocation of the Committee's status. In the Committee's submission, the Agency Agreement is binding only as between the Committee and its agent, and is irrelevant for the purposes of determining compliance with the Act. The Committee submits that the Minister's decision to rely on breach of the Agency Agreement in his decision to revoke demonstrates his unfamiliarity with the law of agency, specifically with regard to the ability of a principal and agent to rearrange their affairs as they see fit, whether or not such changes supercede the written agreement.

[30] In my analysis, the Committee misconstrues the Minister's position. Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas. In this case, the Agency Agreement was ignored by the Committee, and the Minister was not satisfied that the Committee's

explanations of its conduct overseas were sufficient to overcome his conclusion that the Committee had no direction or control over how funds were spent by its agent. The evidence that was provided would suggest that the Committee was merely acting as a conduit for Canadian donors to overseas donees. For example, the evidence discloses that the Committee sent the majority of the funds it raised to its agent in Israel, but provided little documentary evidence of the Committee's control over how those funds were spent. The Committee submits that the written Agency Agreement was superceded by subsequent oral arrangements with its agent, and asserts that its directors had travelled to Israel on numerous occasions specifically to oversee and direct the agent's activities pursuant to those oral arrangements. Again, however, there is little evidence on the record from which this Court might conclude that the Committee was, in fact, exercising the control and direction it claims.

[31] In my view, in light of this conflict between the Agency Agreement and alleged oral arrangements, and considering the many other concerns raised by the Minister, such as the improper recording of expenditures in the Committee's records, the agent's failure to keep a separate bank account, and the lack of documentary evidence of direction and control by the Committee, it was not unreasonable for the Minister to conclude that the Committee was not in control or direction of its agent in Israel. His conclusion is all the more reasonable in light of the Committee's failure to comply with its 1996 Undertaking, whereby it undertook to abide by the terms of the written Agency Agreement.

[32] The Committee also asserts three specific instances whereby the Minister violated the requirements of fundamental justice:

a. By raising a new allegation in stating for the first time, in his April 27, 2000 letter, the assertion that the Committee had failed to comply with paragraphs 5 and 6 of the Agency Agreement;

b. refusing to provide a response to the Committee's requests for clarification in his February 25, 2000, letter to enable the Committee to properly respond to the Minister's letter of December 15, 1999;

c. refusing to consider evidence provided by the Committee in its February 25, 2000 letter, by simply stating in his April 27, 2000 letter that "... the above written report was not available at the time of the audit ...".

[33] Paragraph 5 of the Agency Agreement requires the Committee to provide to its agent a list of programs and activities it wishes to support and that it wishes it agent to carry out on its behalf. The list must state the amount allocated to each item on the list and constitutes authorization for the agent to carry on those programs and activities on behalf of the Committee. Paragraph 6 of the Agency Agreement requires that if the Committee wishes to acquire realty, sports and medical equipment, or construct community centres, youth centres and sports facilities, the agent can conduct a search for the equipment, building materials and/or realty, but the Committee must designate the type of equipment or area of land, or the total construction amount. Further, title to all realty, equipment and facilities constructed must remain with the Committee.

[34] Contrary to the Committee's claim, the Minister gave notice to the Committee in his letter dated December 15, 1999 concerning the 1997 Audit that the Committee's refusal to maintain further documentation on the agent's activities was in violation of clauses 5 to 10 of the Agency Agreement. The Minister stated that:

At the debriefing meeting, the Charity's accountant, Mr. Alex Serota informed the auditor that he (Mr. Serota) personally verified the activities and vouchers [of the agent] during his personal visits to Israel, as did the major donors. He further added that notwithstanding our letter of March 26, 199, maintenance of any further documentation on the Agent's activities was not deemed necessary. The seriousness of such a statement are as follows:

- Violation of subsection 230(2) of the Act.

- Violation of clauses 5 to 10 of the Agency Agreement.

- No documentary evidence of Mr. Serota's visit with the Agent, or his working papers relating to any reviews conducted by him.

Clearly, the Committee's complaint with regards to a lack of notice about non-compliance with paragraphs 5 and 6 of the Agency Agreement before the April 27, 2000 letter is without merit.

[35] With regard to the Committee's second complaint, the clarifications requested by the Committee in its letter dated February 25, 2000 are as follows:

9. The accountant is not aware of any requirement to provide more detailed information in the financial statements submitted in support of the Charity's Annual Information Return. If more detail is required, we would ask for information as to what detail should be included. ...

Mr. Serota does not understand the comments relating to "spoiled receipts". If they were easily discernible by your auditor as "spoiled", why was there a question? He does not understand the statement that spoiled receipts were not retained by the Charity.

Mr. Serota does not understand the reference to the lack of reconciliation of donation receipts with the T-3010 and the financial statements, unless the auditor is referring to the fact that donation receipts were not issued to all of the individual donors, which is correct. ...

13. Mr. Serota does not understand how the Information Return was properly improperly completed and asserts that it was completed on the computer program as requested by your Division.

[36] Dealing first with the Information Return, I would note that the Minister also states in his December 15, 1999 correspondence that:

Audit evidence and our review indicated that the Charity improperly completed the information return in that many of the items reported were incorrectly identified or omitted. Specifically, fundraising and administration costs were purported to be charitable expenses and included in the disbursement quota calculation. Also a donation receipt to another charity $5,000 was reported at Line 100 of the Return thus affecting the disbursement quota for the following year.

Given the foregoing, I can perceive no denial of fundamental justice surrounding the Information Return.

[37] The Committee's questions about the spoiled donation receipts and the discrepancy between the donation receipts and the T3010 information return and financial statements are also without merit given that the Minister's auditor noted on the Charity Audit Checklist that T3010, donation receipt and reporting issues were discussed with the Committee. Accordingly, it was not procedurally unfair for the Minister not to respond to the Committee's questions about the donation receipts and the Information Return discrepancy.

[38] Dealing with the Committee's third complaint, I am also satisfied that the Minister was entitled to reject the evidence in the written report submitted with the Committee's letter of February 25, 2000. The Committee was told by the Minister in his March 26, 1996, letter that if it chooses to administer its work through an agent, it must meet the following conditions:

(1) The charity should establish some sort of current, formal, written declaration which would state in each case that the organization/individual to be funded in this matter will be carrying out certain stated activities which the charity wishes to see accompanied on its behalf during the term of the agreement.

(2) Each organization or individual so funded should provide some system of continuous and comprehensive documented reporting, including expense vouchers, to the charity (on at least a quarterly or semi-annual basis) concerning its ongoing activities which are carried out on behalf of the charity. Such reports should be supplemented at least yearly by a financial report reflecting the use of funds transferred to the agent.

(3) The charity's funds should remain apart from those of its representative so that the charity's role in any particular project or endeavour is separately identifiable as its own charitable activity.

(4) Financial statements submitted in support of the charity's annual information returns should provide a detailed breakdown of expenditures made in respect of its own charitable activities including those performed by its agents, and the names of all qualified donees to which funds have been gifted in the year covered by the return.

[39] Further, the Minister stated that "[t]hese reports would have to be kept with the charity's other records and books of account at the address recorded with this Department". Clearly, the Committee had adequate notice of the need to maintain records on its premises with regards to the activities being carried out on its behalf by the agent. The Committee should have had the documentation readily available at the time of the 1997 Audit. Providing the written report subsequent to the 1997 Audit was insufficient. From the Minister's perspective, it was the Committee's failure to have the report available at the time of the Audit, not the contents of the report, which was important. The Committee, in failing to have the report readily available, had again breached the Agency Agreement by which it had undertaken to abide. Given these facts, it was not procedurally unfair for the Minister to refuse to consider the written report submitted with the Committee's February 25, 2000 letter.

Issue 5: Whether the Minister erred in law in concluding that the Committee ceased to comply with the requirements of the Act

[40] Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities. In this case, the Minister's main reasons for revocation are that the Committee could not demonstrate, through documentary evidence, that it exercised a sufficient degree of control over the use of its funds by its agent in Tel Aviv and the Committee did not keep proper books and records of activities carried on by its agent. Even though the Minister's reasons are couched in terms of non-compliance with the Agency Agreement, the requirements under the latter are, in my view, simply a means of ensuring compliance with the Act.

[41] Further, subsection 230(2) of the Act requires that every charity keep records and books of accounts containing: information that will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act; a duplicate of each receipt containing prescribed information for a donation received by it; and other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act. Subsection 230(3) also provides that "[w]here a person has failed to keep adequate records and books of account for the purposes of [the Act], the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of accounts as so required."

[42] It is clear from the auditor's comments surrounding the 1997 Audit that the Committee was not maintaining adequate records of the activities undertaken by its agent. It is also clear that there were no records from the agent for the 1997 fiscal year until the Committee submitted, with its February 25, 2000, letter, a written report dated January 6, 2000, from its agent together with its agent's brochure. The Committee states that the reason for the lack of records is the frequent changeovers in the administration of the organization responsible for the agent. This, however, is the same reason given by the Committee during the 1993 Audit, which gave rise to its 1996 Undertaking. Based on the record, it is evident that the Committee did not maintain proper records, as required by subsections 230(2) and (3) of the Act. Accordingly, the Minister did not err in concluding that the Committee ceased complying, if it ever did comply, with the requirements of the Act.

Issue 6: Whether the Minister erred in making the failure to issue a T4 or T4A receipt a ground for de-registration, thereby taking irrelevant considerations into account

[43] In his April 27, 2000 letter, the Minister stated that he noted the Committee's intention to comply with the need to issue T4 or T4A slips in the future, but that a similar situation had occurred during the 1993 Audit. The Committee argues that it is not required to file an information slip, such as a T4A slip, to a non-resident of Canada (*Income Tax Regulations*, C.R.C. 945, Reg. 202). Further, the

Committee asserts that the failure to file a T4A slip is not grounds for revocation since charities are exempt from the penalty provision in subsection 162(7) of the Act.

[44] The Minister does not say that failure to file a T4A slip by itself would lead to de-registration, but rather says that it is an example of the Committee's continuing failure to fulfil its undertakings. Given this position, and in light of the overwhelming evidence that supports the Minister's main reasons for de-registration, this issue seems to me to be of little significance.

CONCLUSION

[45] I would dismiss the appeal with costs.

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: A-357-00

STYLE OF CAUSE: The Canadian Committee for the Tel Aviv Foundation v. Her Majesty The Queen

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: February 19, 2002

REASONS FOR

JUDGMENT OF THE COURT: (Malone, Rothstein & Sharlow.J.J.A)

DATED: March 1, 2002

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