

Date: 20030619

Docket: A-406-02

Citation: 2003 FCA 272

CORAM: ROTHSTEIN J.A.

NOËL J.A.

SEXTON J.A.

BETWEEN:

CHOSEN PEOPLE MINISTRIES

Appellant

- and -

CANADIAN JEWISH CONGRESS and

THE REGISTRAR OF TRADE-MARKS

Respondents

Heard at Toronto, Ontario, on June 18, 2003.

Judgment delivered from the Bench at Toronto, Ontario, on June 18, 2003.

REASONS FOR JUDGMENT OF THE COURT BY:
J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario on June 18, 2003)

SEXTON J.A.

[1] This is an appeal by Chosen People Ministries ("CPM") from the decision of the Trial Division which held that the Registrar of Trade Marks had erred in publishing notice of the Official Mark "Menorah Design" under sections 9 and 11 of the *Trade-marks Act*.

[2] CPM argued that the Motions Judge erred in adopting the standard of review of the decision of the Registrar as being that of correctness and that the standard should have been that of reasonableness. It is our view that whether the standard of review is that of correctness or reasonableness, the Motions Judge did not err in concluding that the decision of the Registrar could not stand. We do not believe that the Motions Judge erred in concluding that CPM is not a public authority.

[3] The objects of the CPM were essentially to spread the Gospel of the Lord Jesus Christ among the Jews. The objects were further stated to be contained in the "Doctrinal Bases":

Section I

The members of the Corporation hereby declare and affirm their belief in the Divine Inspiration, infallibility and authority of the Old and New Testaments; in the Triune God, the Father, the Son and the Holy Spirit; in the Deity of the Lord Jesus Christ as the only begotten Son of God; in the pre-millennial second coming of the Lord Jesus Christ; in the sacrificial blood atonement of the Lord Jesus Christ at Calvary and His bodily resurrection from the dead; finally in the lost condition of every human being, whether Jew or Gentile, who does not accept salvation by faith in the Lord Jesus Christ, and, therefore, in the necessity of presenting the Gospel to the Jews.

Section II

Only persons who give assent to the doctrinal basis as contained in Section I of this article, either verbally or in writing as may be required by the Board of Directors and who are

known to be interested in the evangelization of the Jews, shall be eligible to membership in this Corporation.

[4] We are of the view that there is no government control over the carrying out of CPM's activities in pursuit of these objects or in the way they conduct their affairs in pursuit of these objects. The fact that CPM, as a charity, is obliged to comply, as are all other charities, with the law generally relating to charities, including the *Income Tax Act* does not, in our view, give rise to sufficient government control to qualify CPM as a public authority.

[5] CPM objected to the evidence filed by Canadian Jewish Congress ("CJC") before the Motions Judge although it agreed CPM could file evidence to show that it had standing. The Motions Judge held, without relying on the evidence filed by CJC, that CPM did not qualify as a public authority under the *Trade-marks Act*. This was his main reason for disqualifying CPM as a public authority. In light of our conclusion, the issue of the admissibility of evidence becomes moot.

[6] The appeal will be dismissed with costs.

"J. E. Sexton"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-406-02

STYLE OF CAUSE: CHOSEN PEOPLE MINISTRIES

Appellant

- and -

CANADIAN JEWISH CONGRESS and

THE REGISTRAR OF TRADE-MARKS

Respondents

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 18, 2003

REASONS FOR JUDGMENT

OF THE COURT BY: SEXTON J.A.

DATED: JUNE 19, 2003

APPEARANCES: Mervyn F. White

For the Appellant

Benjamin Zarnett, and

Richard Naiberg

For the Respondent,

Canadian Jewish Congress

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Canadian Jewish Congress