

Date: 20040504

Docket: A-496-02

Citation: 2004 FCA 181

CORAM: LINDEN J.A.

NOËL J.A.

SEXTON J.A.

BETWEEN:

FUARAN FOUNDATION

Appellant

and

CANADA CUSTOMS AND REVENUE AGENCY

Respondent

Heard at Vancouver, British Columbia on May 4, 2004.

Judgment delivered from the Bench at Vancouver, British Columbia on May 4, 2004.

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

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia on May 4, 2004)

SEXTON J.A.

[1] The Appellant appeals from the refusal of the Canada Customs and Revenue Agency (CCRA) to register the Appellant as a charity under the provision of the *Income Tax Act*.

[2] The main activity upon which the Appellant relied to establish its rights to charitable status was the support and operation of a Christian retreat centre in Great Britain. The Appellant entered into an agreement with Stillicidia, a private limited company incorporated and registered under the laws of England and Wales. Stillicidia acts as agent for the Appellant in operating the retreat which operates on what appears to be an estate bought by the Appellant in the Lake Region of England.

[3] While the listed objects and purposes of the Appellant focus on the advancement of the Christian religion the brochure advertising the retreat is instructive. While making reference to Christian life and spirituality it also refers to non-religious pursuits. It provides *inter alia* as follows:

As well as welcoming single folk and families to stay in a dedicated self catering studio in the house, we can also welcome groups of up to 8-10 people to spend the day with us. This may be for a day of quiet or for a day of creativity using your hidden talents to produce a drawing, painting, wood carving, cut gemstone, icon or photograph. With Richard's help you can find ways of bringing your creative talents to the forefront whilst enjoying your retreat.

Alternatively we can tailor a study theme to suit your choice.

Possible topics include:

Icons and prayer

Creation forms and figure

Contemplative and creative Prayer

Fantasy Prayer

Looking into the Lord's Prayer

Creative Painting and drawing

Woodcarving

Candle making

and others - please discuss your interests with us.

We charge £ 10 per person for a quiet day, £ 30 per person for a creative workshop. Morning and afternoon refreshments are provided when the day is spent at the house.

Please bring a packed lunch.

For larger groups, sometimes we are unable to come to you and offer our workshops, (depending on the medium or topic) for travelling expenses plus a negotiable charge.

It further stated:

At **Stillicidia** we provide for the beginner as well as those more experienced in craft work or in prayer. You are invited to join in our short morning liturgy and our evening meditation as and when you wish to. We do not force people into prayer - we invite them to experience and enjoy whatever they feel comfortable with.

Come and enjoy something new with us - or just come and be! You are welcome to come for a quiet retreat here if that is what you prefer. ...

Our emphasis is in providing what you want - whether it be a quiet time alone or having the opportunity to share and talk through the difficult things in your faith life ... but at the same time we also offer you the chance of enjoying the opportunity to learn or improve your creative craft skills. ...

Please specify how you would like to spend your visit (e.g. "quiet retreat"), and particularly note if there is any craft, topic or issue which you would like us to work on with you.

[4] The facility is in a fairly remote location and only provides one room where participants may stay overnight. Other persons must arrange their own accommodation elsewhere or travel to and from the retreat daily.

[5] There was a gift of \$1.5 million to the Appellant by a donor who is one of the Applicants for incorporation of the Appellant's foundation. The Appellant requests that registration as a charity be made effective by December 31, 2000 for the tax purposes of the donor.

[6] The CCRA refused registration for a number of reasons. The main ones were: firstly, the language of the Appellant's constitution was so broad as to allow it to undertake non-charitable activities including provision of financial assistance to non-qualified donees. Paragraph 2(a) of the Appellant's constitution provided that

2. "The objects and purposes of the Foundation are to advance the Christian Religion and to advance Education by undertaking programs and projects in pursuit of its purposes as are exclusively charitable at law by:

(a) providing financial assistance for the establishment and continued support of individual Christians and Christian organizations engaged worldwide in:

(i) teaching the Word of God and preaching the Gospel of Jesus Christ to all persons;

(ii) assisting all persons through teaching and discipleship to accept and develop a Christian and Biblical lifestyle which discerns and applies the principles of Christian living as set out in the Holy Bible and revealed by the Holy Spirit of God; and

(iii) assisting the poor, the sick, and the needy by acts of Christian charity;

[7] Secondly, attendees at the Appellant's workshops have complete discretion as to whether or not they will participate at all in the religious activities. The Appellant has not made it clear whether the primary activity will involve conducting religious retreats or merely the operation of a "resort" like any quiet inn or lodge. The brochure advertises both with different rates for each.

[8] The Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue* 99 D.T.C. 5034 set out two requirements for registration of a charity. First the purpose of the organization must be exclusively charitable and must define the scope of the activities engaged in by the organization. Second, all of the organization's resources must be devoted to charitable activities.

[9] In the present case, the Appellant argues that its purpose is the advancement of the Christian religion.

Standard of Review

[10] While the Supreme Court of Canada did not expressly address the question of standard of review in *Vancouver Society, supra* the following paragraph of Iacobucci J.

suggests that when determining whether activities are charitable, the appropriate standard of review is reasonableness:

This conclusion is bolstered, I think, by the nature of the activities which the Society viewed as coming within purpose (a). On the basis of the Society's submissions and follow-up conversations, it was not unreasonable for Revenue Canada to conclude that there was no systemic instructional structure or format to the supposedly educational activities planned by the society. [my emphasis]

Analysis

[11] We are of the view that the conclusions of the CCRA were not unreasonable. The Appellant's constitution provides that its object is to provide financial assistance to "individual Christians and Christian organizations". There is no requisite that the donees be qualified within the meaning of the *Income Tax Act*. In our view, an undertaking of the Appellant to only donate to qualified donees is insufficient. The Appellant has provided no authority to suggest that an undertaking can effectively narrow the objects in its constitution.

[12] Furthermore, it cannot be said that the activities of the Appellant are exclusively for the purpose of advancing the Christian religion.

[13] The following definitions of what it means to advance religion have been provided by the courts. In *United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council*, [1957] 1 W.L.R. 1080, advancing religion was defined as: "to promote it, to spread its message ever wider among mankind; to take some positive steps to sustain and increase religious belief; and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary". In *Keren Kayemeth Le Jisroel Ltd. v. The Commissioners of Inland Revenue*, [1931] 2 KB 465 (CA), Rowlatt J. stated: "It seems to me that the promotion of religion means the promotion of the spiritual teaching of the religious body concerned and the maintenance of the spirit of the doctrines and observances upon which it rests ...".

[14] The analysis of Iacobucci J. in *Vancouver Society*, although the Court was dealing with the "advancement of education", would presumably apply also to "advancement of religion".

To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough ...

[15] In effect, what the Appellant proposes is to simply make available a place where religious thought may be pursued. There is no targeted attempt to promote religion or to take positive steps to sustain and increase religious belief. There seems to be no structured program relating to advancement of religion and the focus in the Appellant's advertising is not just upon religion but also on personal enjoyment and quiet retreat. The

facts in the present case are essentially similar to those before the U.S. Tax Court in *Schoger Foundation v. Commissioner of Internal Revenue* 1981 U.S. Tax Ct. LEXIS 167.

[16] It cannot be said that all of the Appellant's resources are devoted to charitable activities.

[17] The appeal will therefore be dismissed with costs.

(Sgd.) "J. Edgar Sexton"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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