

Date: 20040930

Docket: A-20-04

Citation: 2004 FCA 324

PRESENT: NOËL J.A.

BETWEEN:

UNITED SCOTTISH CULTURAL SOCIETY

Appellant

and

CANADA CUSTOMS AND REVENUE AGENCY

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario on September 30, 2004.

REASONS FOR ORDER BY:
J.A.

NOËL

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REASONS FOR ORDER

NOËL J.A.

[1] The applicant seeks leave to adduce new evidence on appeal by filing the affidavit of Duncan MacKenzie.

[2] It is apparent that the new evidence which forms the subject matter of this affidavit could have been discovered with reasonable diligence. What the affiant attempts to do in this affidavit is simply to improve upon the information and the responses which were provided to the staff of the Charities Directorate, Canada Customs and Revenue Agency, in the process which led to the decision under appeal. The respondent submits that the Court need go no further to dismiss this application

[3] Nevertheless, the applicant maintains in its reply submission that the present case "is parallel" to the decision of this Court in *Humanist Association of Toronto v. Her Majesty the Queen*, 2002 DTC 7380 where Sharlow J.A. allowed for the submission of new evidence. Like the appellant in that case, the applicant contends that it did not know the basis for the Minister's decision until the decision was rendered and the record upon which the decision was reached was communicated to it.

[4] However, the allegation in the case decided by Sharlow J.A. was that some documents that were before the Minister had not been submitted by the appellant and had not been disclosed to the appellant until the decision had been reached. That is the context in which Sharlow J.A. allowed the appellant to file further evidence.

[5] No such issue arises here. The applicant is at the source of the information which it now wishes to correct or clarify. It knew or ought to have known that the information which it provided to the Department officials would be considered in dealing with the application to have its charitable status reinstated. What the applicant asks is that it be given a second chance to place before the Court the record which it ought to have tendered in the first instance. That is not a proper use of the appeal process.

[6] The application will be dismissed with costs.

Noël

"Marc

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-20-04

STYLE OF CAUSE: United Scottish Cultural Society and Canada Customs and
Revenue Agency

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Noël J.A.

DATED: September 30, 2004

WRITTEN REPRESENTATIONS BY:

Maureen E. Baird
Lynn M. Burch

FOR THE APPELLANT
FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lawson Lundell

FOR THE APPELLANT

Vancouver, British Columbia
Mr. Morris Rosenberg

FOR THE RESPONDENT

Deputy Attorney General of Canada

Ottawa, Ontario