

Date: 20061024

Docket: A-271-05

Citation: 2006 FCA 343

**CORAM: NOËL J.A.
EVANS J.A.
MALONE J.A.**

BETWEEN:

TRAVEL JUST

Appellant

and

CANADA REVENUE AGENCY

Respondent

Heard at Vancouver, British Columbia, on October 23, 2006.

Judgment delivered at Vancouver, British Columbia, on October 24, 2006.

**REASONS FOR JUDGMENT BY:
CONCURRED IN BY:**

**EVANS J.A.
NOËL J.A.
MALONE J.A.**

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REASONS FOR JUDGMENT

EVANS J.A.

[1] On March 29, 2004, Travel Just, a corporation incorporated under the *Canada Corporations Act*, R.S.C. 1970, c. C-32, applied to the Minister of National Revenue to be registered as a charitable organization under subsection 248(1) of the *Income Tax Act*, R.S.C. 1985, 1985, c.1 (5th Supp.) (“*ITA*”). Since the Minister did not dispose of the application within 180 days, the Minister is deemed to have refused the application. Travel Just appeals to this Court under subsection 172(4) of the *ITA* against the Minister’s deemed refusal.

[2] While Travel Just submitted to the Minister a description of activities that it proposes to undertake, this appeal turns on whether Travel Just’s corporate objects, which are set out in its Letters Patent, are exclusively charitable for the purpose of the *ITA*. As Iacobucci J. said in *Vancouver Society of Immigrant and Visible Minority Women v. Canada (Minister of National*

Revenue), [1999] 1 S.C.R. 10 at para. 152, (“*Vancouver Society*”), it is the purpose, in furtherance of which an activity is carried out, that determines if the activity is charitable.

[3] If, as a matter of construction, Travel Just’s corporate objects permit it to spend its funds on activities that are not legally charitable, it may not be registered as a charity: *Earth Fund/Fond pour la Terre v. Canada (Minister of National Revenue)*, 2002 FCA 498 at para. 20. This principle is subject to the limited statutory exception for ancillary political purposes (*ITA*, subsection 149.1(6.1)), and (6.2)), and the common law’s incidental purposes doctrine: *Vancouver Society* at paras. 156-58. If, on the other hand, the objects confine it to charitable activities, Travel Just will be entitled to be registered. As a registered charity, it could issue charitable receipts to donors, who may use their donations to reduce their income tax liability.

[4] Travel Just’s principal objects are as follows:

- a. to work with key governmental authorities and grassroots communities of various tourism destination markets to create and develop model tourism development projects that contribute to the realization of international human rights and environmental norms and that achieve social and conservation aims that are in harmony with economic development aims for the particular region;
- b. to develop, fund, administer, operate and carry on activities, programs and facilities to produce and disseminate materials on a regular basis that will provide travelers and tourists with information on socially and environmentally responsible tourism in order to establish normative discourse around traveling with a social conscience.

[5] Counsel argues that Travel Just is eligible to be registered a charity because its objects fall within the fourth, and residual, “other purposes beneficial to the community”, head of the test in *Pemsel v. Special Commissioners of Income Tax*, [1891] A.C. 531 (Eng. H.L.), as elaborated in subsequent jurisprudence.

[6] He says that object (a) of Travel Just's objects authorizes it, in effect, to promote "ethical tourism" in developing countries and, as such, is within the line of cases holding that the general promotion of an industry or trade constitutes a public benefit for the purpose of the *Pemsel* test: see *Commissioners of Inland Revenue v. Yorkshire Agricultural Society* [1927] 1 K.B. 611 (Eng. C.A.).

[7] I do not agree. Even if the promotion of tourism is a charitable purpose, Travel Just's object is not to promote tourism in general, but only those tourist projects which meet the undefined goals of contributing to the "realization of international human rights and environmental norms" and "achieve social and conservation aims that are in harmony with economic development aims for the particular region".

[8] This object, which is limited to a particular, but vague and subjective, view of what kinds of tourism are beneficial to the community, is not, in my opinion, sufficiently analogous to a purpose already recognized as charitable to qualify under the fourth *Pemsel* head of charity.

[9] In addition, the creation and development of "model tourism development projects" with the characteristics described above could include the financing and operation of luxury holiday resorts in developing countries. Promoting commercial activity of this kind, with a strong flavour of private benefit, is not a purpose beneficial to the public which would make Travel Just eligible for a subvention from Canadian taxpayers as a charity.

[10] In a word, laudable as the objects listed in (a) may be, they are too broad and vague. It cannot be said that they restrict Travel Just's expenditures to purposes that are in law charitable.

[11] In view of this conclusion, it is not necessary to go further. However, I doubt whether the dissemination of information described in object (b) would qualify as either the publication of research, or an educational purpose: see *Vancouver Society* at para. 169.

[12] Finally, and in the alternative, Travel Just says that, since it is incorporated under a federal statute and its Letters Patent authorize it to operate throughout Canada, the law of Québec must be examined to see if it recognizes a wider concept of charity than the common law. Counsel submitted that it does, and that, accordingly, Travel Just should be registered as a charitable organization to the extent that it operates in Québec.

[13] I disagree. Travel Just currently conducts no activities anywhere. The applicants for the incorporation of Travel Just, who were also its first directors, had addresses in British Columbia. In its application for registration as a charity, Travel Just gave a Vancouver address as its mailing address. Of the home addresses given for the four directors at that time, two were in British Columbia, one was in Alaska, and one was in California. Travel Just's legal counsel, Mr Bromley, is in Vancouver.

[14] In contrast, there is no indication in the material before us that Travel Just has any connection with Québec or has plans to operate there. The applicability of the law of Québec to Travel Just's activities is thus hypothetical and speculative. In these circumstances, resort to the law of Québec is not necessary and, accordingly, section 8.1 of the *Interpretation Act*, R.S.C. 1985, c. I-

21, is not triggered: compare *Canada 3000 Inc., Re; Inter-Canadian (1991) Inc. (Trustee of)*, 2006 SCC 24 at para. 78-81.

[15] In addition, like the *ITA*, the *Taxation Act*, R.S.Q. c. I-3, defines charity as a charitable organization or foundation, without defining the term “charitable”: see sections 1, 985.1 and 985.1.2. The *Taxation Act* contains no reference to the “social trust” described in Article 1270 of the *Civil Code of Québec*, S.Q. 1991, c. 64. That the private law of Québec may permit the creation of trusts for social purposes which would not qualify as valid purpose trusts at common law because they are not charitable does not, in my opinion, materially advance Travel Just’s claim to the tax advantages of a charity if it were to operate in Québec.

[16] There is considerable force in the submission of the Minister that whether an organization is charitable for the purpose of the *ITA* is a question of public law, and not one of property and civil rights to which the private law of Québec is relevant. In this context, it is significant that Revenu Québec registers an organization as a charity only after confirmation of its registration by the Canada Revenue Agency: Revenu Québec, General Information at www.revenu.gouv.qc/enterprise/impot/organismes/info.asp.

[17] For these reasons, I would dismiss the appeal with costs.

“John M. Evans”

J.A.

“I agree.

Marc Noël, J.A”

“I agree.

J. Brian D. Malone, J.A.”