

Date: 20080215

Docket: A-574-07

Citation: 2008 FCA 62

Present: SHARLOW J.A.

BETWEEN:

INTERNATIONAL CHARITY ASSOCIATION NETWORK (ICAN)

Appellant

and

**THE MINISTER OF NATIONAL REVENUE,
HER MAJESTY THE QUEEN**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 15, 2008.

REASONS FOR ORDER BY:

SHARLOW J.A.

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REASONS FOR ORDER

SHARLOW J.A.

[1] Before me is a motion that requires an examination of the procedures available to a registered charity under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th supp.), upon receipt of a notice of intention to revoke its registration.

[2] In this case some procedural errors have been made due to a misunderstanding. However, the errors can and will be remedied without prejudice to the parties. The appellant has requested an oral hearing. In my view an oral hearing is not necessary.

Summary of the procedures for challenging a revocation notice

[3] When the Minister concludes that the registration of a charity should be revoked, he issues a notice of intention to revoke the registration pursuant to subsection 168(1) of the *Income Tax Act*. The revocation itself does not occur until the revocation notice is published in the Canada Gazette.

[4] Paragraph 168(2)(a) of the *Income Tax Act* provides that the publication of the revocation notice may occur immediately if the revocation was requested by the charity. Where there is no such request (as in this case), the Minister is required by paragraph 168(2)(b) to defer the publication of the revocation notice for a period of time in order to permit the charity to challenge the decision to revoke. There is an automatic deferment period of 30 days, but that may be extended by the Federal Court of Appeal or a judge of the Federal Court of Appeal, provided the order is made before the determination of an appeal under subsection 172(3) of the *Income Tax Act*.

[5] The right of appeal under subsection 172(3) does not arise unless the charity files a notice of objection under subsection 168(4) of the *Income Tax Act* challenging the revocation notice. The notice of objection must be served on or before the day that is 90 days after the service of the revocation notice. If the Minister confirms the revocation notice, or does not confirm or vacate the revocation notice within 90 days after service of the notice of objection, the charity may appeal the revocation notice to the Federal Court of Appeal pursuant to paragraph 172(3)(a.1).

[6] The right of the charity under paragraph 168(2)(b) to seek an extension of the deferment period is independent of the right of appeal under subsection 172(3). An extension may be sought

before the right of appeal is exercised, or even before the right of appeal arises. The only time constraint is that an order granting an extension of the deferment period must be made before the determination of the appeal.

[7] When a charity wishes to seek an extension of the deferment period before an appeal is filed or before the right to appeal arises, the appropriate procedure is an application under Rule 300(b) of the *Federal Courts Rules* (the same procedure as an application for judicial review). If a charity wishes to seek an extension of the deferment period after an appeal has been commenced, the appropriate procedure is a notice of motion in the appeal.

Facts

[8] The appellant International Charity Association Network (ICAN) is a registered charity. On December 3, 2007, the Minister of National Revenue issued to ICAN, pursuant to subsection 168(1) of the *Income Tax Act*, a notice of intention to revoke its registration as a charity. At this stage it is not necessary to consider the reasons for the Minister's action, except to note that it is based on subsection 149.1(2) of the *Income Tax Act*.

[9] Soon afterward, counsel for ICAN spoke to the Registry Officer about the procedure for seeking an extension of the deferment period pursuant to paragraph 168(2)(b). She says she was advised that such an application could not be made unless an appeal was commenced. If that advice was given, it was incorrect. In any event, in an attempt to accelerate the appeal process, ICAN filed a notice of objection pursuant to subsection 168(4) and attempted unsuccessfully to persuade the

Minister to confirm immediately. For reasons that I need not address at this point, ICAN concluded that it was entitled to file the notice of appeal despite the lack of a formal confirmation. That was done on December 20, 2007. At the same time, the appellant filed a notice of motion for an extension of the deferment period. No motion record was filed.

[10] On January 10, 2008, the Minister filed a notice of motion seeking to quash the appeal for want of jurisdiction. The basis of the motion is that the Minister has not confirmed the revocation notice and 90 days have not elapsed since the filing of the notice of objection. ICAN objects to the motion on a number of grounds. Both parties have filed supplementary submissions. Neither of them sought or was granted permission to do so. Nevertheless I will direct that the submissions be filed, and I have considered them.

Discussion

[11] It is obvious from the material filed that from the outset ICAN was attempting only to seek an extension of the deferment period. However, because of the procedure that was followed, the Minister has not made submissions on that point. Instead, the Minister has insisted that all of the proceedings should be quashed. In my view, that would entail an unnecessary waste of time and resources.

[12] It is clear that the notice of appeal was filed prematurely. The Court does not, at this time, have the jurisdiction to grant any of the remedies sought in the appeal. However, I cannot ignore the fact that incorrect information was provided to counsel for ICAN, or the fact that the right of appeal

will arise within about 30 days from now in any event unless the Minister vacates the notice of revocation (which appears to be unlikely).

[13] For that reason, I will defer any decision on the motion to quash the appeal, and I will stay the appeal and establish a procedure by which ICAN will be required to advise the Court whether or not it wishes the appeal to proceed, once the right of appeal arises.

[14] Further, I will ensure that the appellant has an opportunity to seek an order under Rule 369 extending the deferment period until the disposition of the notice of objection and, if an appeal is filed to this Court, until the final disposition of that appeal.

Costs

[15] Both parties have asked for the costs of this motion. The appellant seeks costs on a solicitor and client basis, alleging that it has incurred unnecessary costs because of the Minister's inconsistent or frivolous positions, or because the issues are unduly complicated or complex.

[16] The Minister has done nothing to justify an award of solicitor and client costs in favour of the appellant in this matter. Costs of this motion will be costs in the cause.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-574-07

STYLE OF CAUSE: International Charity Association
Network (ICAN) v. The Minister of
National Revenue et al

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: SHARLOW J.A.

DATED: February 15, 2008

WRITTEN REPRESENTATIONS BY:

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Ms. Evelyn R. Schusheim

FOR THE APPELLANT

Mr. Roger Leclaire

FOR THE RESPONDENT

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FOR THE RESPONDENT