

Date: 20080402

Docket: A-574-07

Citation: 2008 FCA 114

Present: SHARLOW J.A.

BETWEEN:

INTERNATIONAL CHARITY ASSOCIATION NETWORK

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 2, 2008.

REASONS FOR ORDER BY:

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REASONS FOR ORDER

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[1] International Charity Association Network (ICAN) is registered as a charity under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th supp.). The Minister of National Revenue has given ICAN a notice dated December 3, 2007 pursuant to subsection 168(1) of the *Income Tax Act* of his intention to revoke ICAN's registration as a charity. That revocation will be completed if the Minister publishes a revocation notice in the Canada Gazette. ICAN has filed a notice of objection to the notice of intention to revoke ICAN's registration. Before me is a motion by ICAN under paragraph 168(2)(b) of the *Income Tax Act* for an order requiring the Minister to defer publication of the revocation notice until the determination of ICAN's pending objection and any subsequent appeal under subsection 172(3) of the *Income Tax Act*.

[2] The notice of intention to revoke ICAN's registration followed an audit of ICAN covering the years 2001 to 2006. Part of the factual basis for the notice is set out in an affidavit filed on behalf of the Minister in this motion. Although ICAN disputes some of the Minister's factual allegations, it did not cross-examine the deponent of the affidavit submitted on behalf of the Minister.

[3] I have reached no conclusion as whether the Minister's allegations are true, except those that are undisputed. However, if they are true, it is arguable that they provide a *prima facie* justification for the Minister's decision to revoke ICAN's registration. I will mention some of the Minister's allegations to illustrate this point.

[4] The Minister alleges that in 2006, ICAN issued charitable donation receipts totalling approximately \$464 million. ICAN does not dispute that allegation. The Minister alleges that is almost five times the total charitable donation receipts issued by United Way of Greater Toronto in the same year, although ICAN had only 16 employees in Ontario, compared to 165 full-time and 43 part-time employees of United Way of Greater Toronto. The Minister also alleges that ICAN failed to provide the auditor with evidence that it has carried on its charitable activities on the scale on which claims to operate. In addition, the Minister alleges that ICAN has actively participated in tax shelter schemes that resulted in ICAN receiving property for which tax receipts were issued in amounts far in excess of the value of the property.

Test to be applied

[5] I accept the submission of ICAN that the determination of a motion to defer the revocation of a charity pending an objection or appeal should be determined on the basis of the principles that have been developed for interlocutory stays or injunctions: *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

Arguable case

[6] The material filed by ICAN in support of its motion sets out a number of issues it has raised or will raise in its objection and appeal. The Minister properly concedes that ICAN's arguments are not frivolous or vexatious. As I read *RJR – MacDonald*, the Minister's concession is sufficient to establish the existence of an arguable case.

Irreparable harm

[7] ICAN argues that the immediate revocation of its status as a registered charity would stop it from continuing its charitable programs. However, the factual basis for that argument is not clear. It is not and cannot be suggested that the revocation will deprive ICAN of its assets or its legal right to continue with its charitable programs.

[8] ICAN's submissions are based on the premise that the revocation of ICAN's registration as a charity would have the result of precluding it from issuing further charitable donation receipts and therefore will make its fundraising efforts ineffective. However, in the absence of financial information about ICAN, it is impossible to determine whether ICAN has resources available to it to

carry out its charitable programs. There is no evidence, for example, that ICAN has fully utilized the \$464 million in donations it claims to have received in 2006.

[9] ICAN's submission on irreparable harm is weakened by the fact that it does not now have the right to issue charitable donation receipts. That right was suspended by the Minister on November 21, 2007 pursuant to paragraph 188.2(2)(a) of the *Income Tax Act*. ICAN applied to the Tax Court of Canada for a postponement of the suspension, but without success (2008 TCC 3). ICAN's appeal from that decision is unlikely to be heard before the fall of 2008. Therefore, even if the revocation of ICAN's registration is deferred, the Minister's suspension of ICAN's right to issue charitable donation receipts will remain in effect until at least the fall of 2008 or, at the latest, November 28, 2008. Therefore, the most that ICAN can achieve by obtaining the order it now seeks is to regain the right to issue charitable donation receipts some months from now. However, the information provided by ICAN in support of its motion does not address any proposal or plan for future fund raising activities to be undertaken by ICAN. Therefore, there is no basis for concluding that ICAN will suffer irreparable harm at that time if the revocation of its registration is not deferred.

[10] In summary, my review of the record discloses no basis for concluding that ICAN will suffer irreparable harm from the loss of receipting privileges after the termination of the Minister's suspension. For that reason, I will dismiss the motion to defer publication of the revocation notice.

Balance of convenience

[11] Even if I had found irreparable harm, I would have concluded that the balance of convenience in this case favours the Minister.

[12] The Minister takes the position, properly in my view, that the public has a legitimate interest in the integrity of the charitable sector. It is reasonable for the Minister to attempt to safeguard that integrity by carefully scrutinizing tax shelter schemes involving charitable donations of property and, where there are reasonable grounds to believe that the property has been overvalued, by taking appropriate corrective action. In the circumstances of this case, the Minister's factual allegations, while untested, are sufficiently serious to outweigh any advantage ICAN might derive from an order deferring the revocation of its registration as a charity.

"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 v.
THE MINISTER OF NATIONAL
REVENUE

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: SHARLOW J.A.

DATED: APRIL 2, 2008

WRITTEN REPRESENTATIONS BY:

A Christina Tari
Evelyn R. Schusheim

FOR THE APPELLANT

Justine Malone

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Richler and Tari
Toronto, Ontario

Cummings, Cooper, Schusheim, Berliner
Toronto, Ontario

FOR THE APPELLANT

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT