

Date: 20081211

Docket: A-80-08

Citation: 2008 FCA 396

**CORAM: RICHARD C.J.
DESJARDINS J.A.
NOËL J.A.**

BETWEEN:

HOSTELLING INTERNATIONAL CANADA - ONTARIO EAST REGION

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario, on December 9, 2008.

Judgment delivered at Ottawa, Ontario, on December 11, 2008.

REASONS FOR JUDGMENT BY:

RICHARD C.J.

CONCURRED IN BY:

**DESJARDINS J.A.
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REASONS FOR JUDGMENT

RICHARD C.J.

[1] This is a statutory appeal pursuant to subsections 172(3) and 180(1) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1 (the ‘Act’) from the notice of the Minister’s intent to revoke the charitable registration of the appellant, dated July 28, 2006.

[2] The Minister’s decision was made pursuant to paragraphs 149.1(2)(a) and 168(1)(a) of the Act:

149.1 (2) The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1)

149.1 (2) Le ministre peut, de la façon prévue à l’article 168, révoquer l’enregistrement d’une oeuvre de bienfaisance pour l’un ou l’autre des motifs

or where the organization

énumérés au paragraphe 168(1), ou encore si l'oeuvre :

(a) carries on a business that is not a related business of that charity; ...

a) soit exerce une activité commerciale qui n'est pas une activité commerciale complémentaire de cet organisme de bienfaisance; [...]

168. (1) Where a registered charity or a registered Canadian amateur athletic association ...

168. (1) Le ministre peut, par lettre recommandée, aviser un organisme de bienfaisance enregistré ou une association canadienne enregistrée de sport amateur de son intention de révoquer l'enregistrement lorsque l'organisme de bienfaisance enregistré ou l'association canadienne enregistrée de sport amateur, selon le cas : [...]

(b) ceases to comply with the requirements of this Act for its registration as such, ...

b) cesse de se conformer aux exigences de la présente loi relatives à son enregistrement comme telle; [...]

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

[3] The appellant operates a hostel located in the building which formerly housed the Carleton County Gaol in Ottawa. It first received registered charity status effective June 13, 1973 under the name "National Capital Hostelling Association". The appellant's status has been revoked twice in the past for failure to file its annual returns. In both instances, the appellant reapplied for charitable registration and it was granted by the CRA.

[4] The appellant's Letters Patent state the following objects:

a. To promote the education of all, but especially young people, by encouraging in them a greater knowledge, love and care of the countryside and an appreciation of the cultural values of towns and cities in all parts of the world, and as ancillary thereto to provide hostels or other accommodation in which there shall be no discrimination based on

race, nationality, colour, religion, class, political opinions, sex or age, and thereby, to develop a better understanding between persons – both home and abroad.

b. To promote the development, operation and use of hostels for recreational, cultural, and educational programmes, travel and exploration in co-operation with the Ontario Hostelling Association – Association Ontarienne de L’Ajisme and the Canadian Hostelling Association – Association Canadienne de L’Ajisme

c. For the objects aforesaid, to accept donations, gifts legacies and bequests.

[5] Subsequent to an audit of the appellant for its fiscal period ended March 31, 2001, the respondent raised various concerns about the appellant’s compliance with certain provisions of the Act. Following an exchange of correspondence between the appellant and the respondent, on July 28, 2006, the Minister gave the appellant notice of its intent to revoke its charitable registration.

[6] After reviewing the objections made by the appellant, the Minister confirmed its intent to revoke the appellant’s registration on January 30, 2008. The Minister found that the appellant had ceased to comply with the requirements of charitable registration as set out in subsection 149.1(1) of the Act. Specifically, the Minister found that the appellant failed to devote all of its resources to charitable activities since the provision of accommodation in the context of youth hostels is not a charitable activity. Furthermore, the Minister found that the appellant carries on a commercial business that does not meet the requirements of a ‘related business’ under 149.1(1) of the Act.

[7] The Minister’s conclusion that the appellant ceased to qualify for registration is a conclusion of mixed fact and law reviewable on a standard of reasonableness, as per *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[8] The requirements for charitable registration under the Act were outlined by Justice Iacobucci in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10, at paragraph 159:

(1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and

(2) all of the organization's resources must be devoted to these activities unless the organization falls within the specific exemptions of s. 149.1(6.1) or (6.2).

[9] The Supreme Court of Canada has held that in order for the objects of an organization to be charitable at common law they must fall into one of the four categories set out by the House of Lords in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (see e.g. *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42 at para. 26; *Vancouver Society*, at para. 144; *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133). The four categories include: the relief of poverty, the advancement of education, the advancement of religion, and 'other purposes beneficial to the community'. All of the organization's activities must be in furtherance of its charitable purposes in order for those activities to be considered charitable under the Act (*Vancouver Society*, at para. 152).

[10] The appellant claims that facilitating travel by providing low-cost accommodation is an activity that promotes the advancement of education. In *Vancouver Society*, Justice Iacobucci discussed the scope of this *Pemsel* category. At paragraph 171, he stated:

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.

[11] The record before us confirms the Minister's conclusion that the appellant did not carry out its activities in furtherance of the advancement of education or any other recognized charitable purpose. Simply providing an opportunity for people to educate themselves by making available tourist accommodation is insufficient for the activity to be regarded as charitable under the Act. Accordingly, we find that the Minister's decision to revoke the registration of the appellant was reasonable.

[12] The appellant submitted that the appropriate procedure for the Minister to have taken was to annul the charity's registered status pursuant to subsection 149.1(23), rather than to revoke it. The record indicates that the Minister was prepared to do so with the consent of the appellant, which was not given.

[13] Subsection 149.1(23) of the Act provides that annulment is a discretionary procedure that may be followed by the Minister in cases where the organization was registered by the Minister in error or where, solely due to a change in law, the organization has ceased to be a charity.

[14] The Minister did not proceed on the ground that the organization was registered in error but on the ground that the organization had ceased to comply with the requirements of subsection 149.1(1) of the Act in that it failed to devote all of its resources to charitable activities.

[15] Accordingly, the appeal will be dismissed with costs to the respondent.

"J. Richard"

Chief Justice

"I agree
Alice Desjardins J.A."

"I agree
Marc Noël J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-80-08

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NOËL J.A.

CONCURRING REASONS BY:

DISSENTING REASONS BY:

DATED: December 11, 2008

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