

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130423

Docket: A-73-13

Citation: 2013 FCA 109

Present: NEAR J.A.

BETWEEN:

TRINITY GLOBAL SUPPORT FOUNDATION

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Toronto, Ontario, on April 18, 2013.

Order delivered at Ottawa, Ontario, on April 23, 2013.

REASONS FOR ORDER BY:

NEAR J.A.

Federal Court of Appeal



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REASONS FOR ORDER

NEAR J.A.

[1] This is an application by Trinity Global Support Foundation (the "Foundation") pursuant to paragraph 168(2)(b) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supplement) (the "ITA"), for an order extending the period of time that must expire before the Minister of National Revenue (the "Minister") is permitted to publish a copy of the notice of intention to revoke the registration of the Foundation as a registered charity until the conclusion of the process that may commence with the filing by the Foundation of a notice of objection to the Minister's notice of intention to revoke,

pursuant to subsection 168(4) of the ITA. The Minister gave its notice of intention to revoke the registration of the Foundation's charity status on February 1, 2013 in accordance with subsection 168(1) of the ITA.

[2] The Foundation must establish that each of the requirements of the tripartite test set forth in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 have been met (see *International Charity Association Network v. Minister of National Revenue*, 2008 FCA 114). The Foundation must demonstrate that there is a serious issue to be tried, that it will suffer irreparable harm if the requested order is not granted and that the balance of convenience favours granting the order.

[3] The Crown does not dispute that the serious issue element of the test is present and I share the view that, given the low threshold with respect to this element, a serious issue has been raised by the Foundation.

[4] The Foundation argues that revocation will cause it irreparable harm as it will collect fewer donations from fewer donors and thereby lose revenue. It also argues that clients of the Foundation will be seriously impacted if the Foundation is unable to continue to fund their charitable activities. The evidence submitted by the Foundation in this regard is not convincing with respect to its outstanding future funding obligations or to the impact upon client charities. In my view, there is no substantive evidence that the Foundation or its clients will be forced to shut down or be significantly affected prior to its notice of objection being considered. Indeed, the Foundation in its own material claims to have liquid assets that would enable it to carry on its activities, albeit perhaps at a

reduced level, for a period of time (see generally *Holy Alpha and Omega Church of Toronto v. Canada (Attorney General)*, 2009 FCA 265).

[5] Further, even if the Foundation receives less money from donations, it will simply have to disburse smaller amounts to a smaller number of recipients. In my view, this does not constitute "compelling evidence of irreparable harm" to the Foundation (see *Chosen Kallah Fund of Toronto v. Canada (Minister of National Revenue)*, 2008 FCA 311).

[6] The Foundation submits that there will be harm to its reputation if revocation occurs. It is clear from the evidence that the reputation of the Foundation has already been subject to intense public scrutiny for reasons distinct from the notice of intention to revoke. As such, I see no basis upon which to conclude that any possible further harm to the Foundation's reputation will be such as to amount to irreparable harm.

[7] Given my conclusions with respect to irreparable harm, I need not consider the balance of convenience element of the test. However, it is clear that serious allegations have been raised in the context of the proposed revocation. It is clear from the Foundation's own evidence that it has been engaged in fundraising activities using tax shelter arrangements, which have been an activity of legitimate concern generally to the Minister. As such, in my view the public interest in the Minister protecting the integrity of the charitable sector outweighs the Foundation's interest in staying revocation and I see no reason for the Court to grant an equitable remedy to the Foundation.

[8] For the foregoing reasons, the requisite elements for a stay have not been met and the application for such an order is dismissed, with costs.

“D.G. Near”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-73-13

STYLE OF CAUSE: Trinity Global Support Foundation v.
Minister of National Revenue

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 18, 2013

REASONS FOR ORDER BY: NEAR J.A.

DATED: APRIL 23, 2013

APPEARANCES:

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