

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160624

Docket: A-244-15

Citation: 2016 FCA 193

**CORAM: WEBB J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

**CREDIT COUNSELLING SERVICES OF
ATLANTIC CANADA INC.**

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Fredericton, on April 28, 2016.

Judgment delivered at Ottawa, Ontario, on June 24, 2016.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**SCOTT J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

WEBB J.A.

[1] The issue in this appeal is whether activities related to the “prevention of poverty” are charitable activities for the purposes of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) (the *Act*).

[2] Credit Counselling Services of Atlantic Canada Inc. is appealing the decision of the Minister of National Revenue (the Minister) dated April 21, 2015 to confirm the Notice of Annulment of Registration (the Notice) issued on July 12, 2013.

[3] The Notice was issued because the Minister determined that the purposes and the activities of the Appellant were not exclusively charitable as the prevention of poverty was not a recognized charitable purpose.

[4] For the reasons that follow, I would dismiss this appeal.

I. Facts

[5] The Appellant was incorporated under the *Canada Corporations Act*, R.S.C. 1970, c. C-32 in 1993. The objects of the Appellant were stated to be:

- (a) The prevention of poverty;
- (b) To provide professional financial and debt counselling to the community;
- (c) To develop and promote educational programs for the public on family money management, budgeting and use of credit;
- (d) To conduct and fund research on credit-related concerns; and
- (e) To collect and disseminate data and information on consumer credit issues to the public.

[6] By a letter dated October 21, 1993, the Appellant was informed by Revenue Canada Customs, Excise and Taxation that it qualified as a registered charity for the purposes of the *Act*.

[7] Over the next several years the Appellant carried on its activities of providing credit counselling services, an education outreach program and a debt management program.

[8] The debt management program is available to consumers who are in serious financial difficulties but who are employed and have assets. The Appellant negotiates a repayment of the debts with the creditors of the consumer.

II. Decisions of the Minister

[9] The notice of confirmation dated April 21, 2015 confirmed the earlier decision of the Minister to annul the registration of the Appellant as a registered charity.

[10] In the earlier decision dated July 12, 2013, the Minister annulled the registration of the Appellant because, in the Minister's view, the purposes and activities of the Appellant were not exclusively charitable. The Minister focused on the primary objective of the Appellant – the prevention of poverty – and concluded that this was not a recognized charitable purpose. The Minister noted that credit counselling may, in certain situations, “contribute to the charitable purpose of relieving poverty”. However, since the Appellant's services were not limited to individuals who were poor, its services were more properly classified as relating to the prevention of poverty rather than the relief of poverty.

III. Standard of Review

[11] In *Prescient Foundation v. Minister of National Revenue*, 2013 FCA 120, 2013 D.T.C. 5101, this Court confirmed that:

12. In an appeal from a decision of the Minister confirming a proposal to revoke a registration of a charity brought pursuant to paragraph 172(3) of the Act, extricable questions of law, including the interpretation of the Act, are to be determined on a standard of correctness. On the other hand, questions of fact or of mixed fact and law, including the exercise of the Minister's discretion based on those facts and the law as correctly interpreted, are to be determined on a standard of reasonableness...

[12] There is no reason why different standards of review would be applicable to a decision of the Minister to annul a registration. Therefore, extricable questions of law will be reviewed on a correctness standard. Whether activities related to the prevention of poverty are charitable activities for the purposes of the *Act* is a question of law.

IV. Analysis

[13] Only charitable organizations or charitable foundations can be registered charities for the purposes of the *Act* (definitions of “registered charity” in subsection 248(1), and “private foundation” and “public foundation” in subsection 149.1(1) of the *Act*). A “charitable organization” is defined in subsection 149.1(1) of the *Act*, in part, as follows:

charitable organization, at any particular time, means an organization, whether or not incorporated,

(a) all the resources of which are devoted to charitable activities carried on by the organization itself,

...

oeuvre de bienfaisance Est une oeuvre de bienfaisance à un moment donné l'oeuvre, constituée ou non en société :

a) dont la totalité des ressources est consacrée à des activités de bienfaisance qu'elle mène elle-même;

[...]

[14] The Appellant will not meet this test unless the activities related to the prevention of poverty are included as charitable activities. Although this provision is expressed in terms of activities and not purposes, the cases addressing what will be a charitable purpose are directly relevant since an activity could not be a charitable activity if it was not being carried out for a charitable purpose.

[15] It is well recognized that charitable purposes include the following:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- certain other purposes beneficial to the community, not falling under any of the preceding heads.

(*A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency*, 2007 SCC 42,

[2007] 3 S.C.R. 217, at paragraph 26) (*A.Y.S.A.*)

[16] The Appellant did not refer to any cases that have held that the relief of poverty will include the prevention of poverty. To satisfy the requirement that a purpose is for the relief of poverty, the person receiving the assistance must be a person who is then in poverty. Poverty is a relative term. Therefore, it is possible that in some situations providing assistance through counselling or by other means to individuals in serious financial trouble may be considered to be relieving poverty, even if the individuals are not then destitute (*Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, 169 D.L.R. (4th) 34, at paragraph 185) (*Vancouver Society*).

[17] However, it is clear that the Appellant is assisting many consumers who are employed and who have assets and therefore would not necessarily, as of the time of receiving the assistance, be considered to be in poverty. In 2010 the Appellant assisted consumers in paying over \$10 million to their creditors under the debt management program. There is no indication that the Appellant screened these clients and only offered its services to those individuals who would be considered to be “poor” as determined for the recognized charitable purpose of the relief of poverty. The activities of the Appellant can best be described as related to the prevention of poverty.

[18] In the United Kingdom, Parliament adopted the *Charities Act 2011*, 2011, c. 25 and in so doing included the prevention of poverty (in addition to the relief of poverty) as a charitable purpose. In effect, the Appellant is asking this Court to do that which required an act of the UK Parliament to do. In my view, just as in the United Kingdom, it will require an act of Parliament to add the prevention of poverty as a charitable purpose.

[19] As a result, in my view, the prevention of poverty is not a charitable purpose and hence the Appellant cannot succeed on this ground.

[20] The Appellant also argues that it should succeed under the fourth category of purposes beneficial to the community.

[21] In *Vancouver Society* the Supreme Court outlined the requirements for this fourth category of charitable purposes:

175 In *Native Communications Society, supra*, at pp. 479-80, the Federal Court of Appeal set out certain "necessary preliminaries" for the determination of a charitable purpose under the fourth category of Lord Macnaghten's formulation. As Stone J.A. put it, the purpose must be beneficial to the community "in a way which the law regards as charitable" by coming within the "spirit and intendment" of the preamble to the *Statute of Elizabeth* if not within its letter, and whether a purpose would or may operate for the public benefit is to be answered by the court on the basis of the record before it and in exercise of its equitable jurisdiction in matters of charity.

176 In other words, more is required than simple "public benefit", in the ordinary sense of that term, to bring a purpose within the fourth head of *Pemsel*. In *Positive Action Against Pornography, supra*, at p. 352, Stone J.A. stressed that the task of the court under this heading is relatively narrow; it is not called upon "to decide what is beneficial to the community in a loose sense, but only what is beneficial in a way the law regards as charitable" (emphasis added). Thus, it is not sufficient to assert, as the Society has, that, by helping immigrant and visible minority women to obtain employment, it creates a "level playing field", which is in the public benefit because it is "in the public interest of immigrants and in fact of all Canadians that immigrants obtain employment as quickly as possible". Rather than laying claim to public benefit only in a loose or popular sense, it is incumbent upon the Society to explain just how its purposes are beneficial in a way the law regards as charitable.

177 In *D'Aguiar, supra*, it was recognized that the guidance provided by the common law in this area is not particularly clear. I agree. The requirement that the purposes benefit the community "in a way the law regards as charitable" is obviously circular, and the various examples enumerated in the preamble to the *Statute of Elizabeth* seem to lack a common character or thread on which to base any coherent argument from analogy. That notwithstanding, however, the Privy Council in that case set out what is in my view a useful approach to the assessment of an organization's purposes under the fourth head (at p. 33):

[The Court] must first consider the trend of those decisions which have established certain objects as charitable under this heading, and ask whether, by reasonable extension or analogy, the instant case may be considered to be in line with these. Secondly, it must examine certain accepted anomalies to see whether they fairly cover the objects under consideration. Thirdly — and this is really a cross-check upon the others — it must ask whether, consistently with the objects declared, the income and property in question can be applied for purposes clearly falling outside the scope of charity; if so, the argument for charity must fail.

To this I would add the general requirement, outlined in *Verge v. Somerville, supra*, at p. 499, that the purpose must also be "for the benefit of the community

or of an appreciably important class of the community" rather than for private advantage.

[22] In order to qualify under the fourth heading, the purpose must be beneficial to the community in a way the law regards as charitable. The Appellant has not established that its services, aimed at the prevention of poverty, would benefit the community in a way that is considered charitable. It seems clear that those individuals who have been assisted in paying down their debts and better managing their finances have benefited but it is far from clear why this is not a private advantage enjoyed by these individuals or how this would be beneficial to the community in a way that the law regards as charitable.

[23] As a result, in my view, the Appellant has failed to establish that the Minister made any error in annulling the registration of the Appellant as a registered charity and I would dismiss this appeal, with costs.

"Wyman W. Webb"

J.A.

"I agree.
A.F. Scott J.A."

"I agree.
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-244-15

**(APPEAL FROM A DECISION OF THE MINISTER OF NATIONAL REVENUE
DATED APRIL 21, 2015 CONFIRMING THE NOTICE OF ANNULLMENT OF
REGISTRATION ISSUED ON JULY 12, 2013, FILE NO. 0969964)**

STYLE OF CAUSE: CREDIT COUNSELLING SERVICES OF
ATLANTIC CANADA INC. v. MINISTER
OF NATIONAL REVENUE

PLACE OF HEARING: FREDERICTON

DATE OF HEARING: APRIL 28, 2016

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: (SCOTT AND DE MONTIGNY JJ.A.)

DATED: JUNE 24, 2016

APPEARANCES:

Paul Harquail FOR THE APPELLANT

Joanna Hill FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart McKelvey FOR THE APPELLANT
Saint John, New Brunswick

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada