

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130507

Docket: A-151-13

Citation: 2013 FCA 126

PRESENT: STRATAS J.A.

BETWEEN:

GATEWAY CITY CHURCH

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Heard at Vancouver, British Columbia, on May 7, 2013.

Judgment delivered at Vancouver, British Columbia, on May 7, 2013.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] The Gateway City Church applies for an order that, if granted, will prevent the Minister from revoking its charitable status under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). For the reasons set out below, I dismiss the application, with costs.

A. Background

[2] The Gateway City Church is registered as a charity under the Act.

[3] Recently, the Minister has given notice of her intention to revoke the Church's registration as a charity: Act, subsection 168(1). The Church loses its registration as a charity when the Minister's notice is published in the *Canada Gazette*.

[4] In her notice, the Minister alleges that the Church has failed to comply with the Act in several respects:

- Failure to maintain adequate books and records: Act, subsection 149.1(2), paragraph 168(1)(e) and section 230;
- Failure to devote all of its resources to its own charitable activities: Act, subsections 149.1(1) and 149.1(2) and paragraph 168(1)(b);
- Provision of personal benefits to a proprietor, member, shareholder, trustee or settlor: Act, subsections 149.1(1) and 149.1(2) and paragraph 168(1)(b).

[5] Where, as here, the charity has not requested the revocation, the publication of the Minister's notice is deferred for 30 days in order to allow the charity to challenge it: Act, paragraph

168(2)(b). The challenge consists of the making of an objection and, if necessary, an appeal to this Court: Act, section 172. The Church has filed an objection.

[6] The 30 day period can be extended: Act, paragraph 168(2)(b).

[7] By application brought under Rule 300(b) of the *Federal Courts Rules*, the Church seeks an extension until the Minister decides upon the Church's objection, or until this Court determines the appeal from the Minister's decision, whichever is later. In effect, the Church wishes to maintain its charitable status under the Act until the merits of its objection have been determined.

B. A preliminary issue

[8] The parties agree that the proper respondent is the Minister of National Revenue, not Her Majesty the Queen in Right of Canada. Therefore, to reflect this, the style of cause shall be amended.

C. The legal test to be applied in this application

[9] The parties agree that the Church's application can be granted only if the Church meets the test for the granting of stays and injunctions: *International Charity Association Network v. Minister of National Revenue*, 2008 FCA 114 at paragraph 5. The Church must show:

- it has an arguable case against the revocation;

- it will suffer irreparable harm if the revocation is allowed to happen; and
- the balance of convenience lies in its favour.

(RJR-MacDonald v. Canada (Attorney General), [1994] 1 S.C.R. 311.)

D. Applying the legal test

(1) Arguable case

[10] On the first branch of the threefold test, the Church must establish that its objection raises a serious question to be tried.

[11] The threshold for seriousness is “a low one” and “liberal”: *RJR-Macdonald, supra* at page 337; *143471 Canada Inc. v. Quebec (Attorney General)*, [1994] 2 S.C.R. 339 at page 358, *per* La Forest J. (dissenting, with apparent concurrence on this point from the majority). The Church need only show that the matter is not destined to fail or that it is “neither vexatious nor frivolous”: *RJR-Macdonald, supra* at page 337.

[12] Given the lowness of this threshold, the Minister does not contest that the Church has met this branch of the threefold test.

(2) Irreparable harm

[13] If the Church's registration as a charity is revoked, it will not be able to issue receipts for donations. Future donors will not be able to claim deductions for their donations. The Church says donations will fall off, preventing it from doing essential work for its congregation and the wider community.

[14] Such a general assertion is insufficient to establish irreparable harm: *Holy Alpha and Omega Church of Toronto v. Canada (Attorney General)*, 2009 FCA 265 at paragraph 22. That sort of general assertion can be made in every case. Accepting it as sufficient evidence of irreparable harm would unduly undercut the power Parliament has given to the Minister to protect the public interest in appropriate circumstances by publishing her notice and revoking a registration even before the determination of the objection and later appeal.

[15] General assertions cannot establish irreparable harm. They essentially prove nothing:

It is all too easy for those seeking a stay in a case like this to enumerate problems, call them serious, and then, when describing the harm that might result, to use broad, expressive terms that essentially just assert – not demonstrate to the Court's satisfaction – that the harm is irreparable.

(*Stoney First Nation v. Shotclose*, 2011 FCA 232 at paragraph 48.) Accordingly, “[a]ssumptions, speculations, hypotheticals and arguable assertions, unsupported by evidence, carry no weight”:

Glooscap Heritage Society v. Minister of National Revenue, 2012 FCA 255 at paragraph 31.

[16] Instead, “there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted”: *Glooscap*, *supra* at paragraph 31. See also *Dywidag Systems International, Canada, Ltd. v. Garford Pty Ltd.*, 2010 FCA 232 at paragraph 14; *Canada (Attorney General) v. Canada (Information Commissioner)*, 2001 FCA 25, 268 N.R. 328 at paragraph 12; *Laperrière v. D. & A. MacLeod Company Ltd.*, 2010 FCA 84 at paragraph 17.

[17] In this case, the evidence tendered by the Church falls short in a number of respects:

- The evidence shows that the Church’s members seem loyal and have donated much in past years. Much is said about the Church’s importance and value to its congregation and the community. Will donors suddenly reduce their donations to zero because they cannot obtain a charitable receipt?
- There is no evidence from donors in the record. It is speculative to conclude that donations will fall off to such an extent that the Church’s existence is imperilled.
- Even if donations fall off to some extent, there is no evidence showing how this will affect the Church’s overall budgetary position. What is the Church’s budgetary position? What assets does it have? What liabilities does it have? Between now and the ultimate determination of the Church’s objection or later appeal, what financial events will take place? The record is silent.

- The Church asserts that it will no longer be able to rent facilities for its services and Bible classes. It adds that benevolence assistance to local food banks and single-parent households in need will stop. It says that other beneficial payments it makes will stop. But without information about the financial circumstances of the Church and the size of these expenditures, these assertions cannot qualify as irreparable harm.

[18] Irreparable harm must be demonstrated, not just asserted. Demonstration is achieved by supplying particular information that empowers the Court to find the existence of harm that cannot be repaired later. In the record before this Court, there is only assertion, not demonstration.

[19] Counsel for the Church fairly conceded that particularity was missing from the evidence the Church tendered. However, he urged the Court to view this in the context of this application – a proceeding brought urgently, with little time to prepare.

[20] I accept there was urgency in bringing this application. However, to some extent, the urgency was created by the Church's delay in retaining and instructing counsel.

[21] In her notice of intention, the Minister told the Church it had thirty days to apply to this Court for relief. Thirty days was more than enough time for the Church to retain counsel and file evidence disclosing the particular information known to it and readily at hand.

(3) The balance of convenience

[22] It is not necessary to consider this branch of the threefold test.

E. Disposition

[23] The Church has failed to demonstrate irreparable harm. For this reason, its application must be dismissed, with costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-151-13

STYLE OF CAUSE: Gateway City Church v. The Minister
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