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Court File No.

A-245-24

FEDERAL COURT OF APPEAL

BETWEEN:

**JEWISH NATIONAL FUND OF CANADA INC.
FONDS NATIONAL JUIF DU CANADA INC.**

Appellant
(Responding Party)

and

MINISTER OF NATIONAL REVENUE

Respondent
(Responding Party)

RESPONDENT'S MOTION RECORD

(Re Proposed Respondents' motion for joinder)

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FEDERAL COURT OF APPEAL

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Appellant
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RESPONDENT'S WRITTEN REPRESENTATIONS

(Re Proposed Respondents' motion for joinder)

OVERVIEW

1. The Minister of National Revenue is the sole and proper respondent. Only the Minister's delegates had the authority and discretionary power under the *Income Tax Act* to render the decision under appeal. The Proposed Respondents' communications to the Minister about the Appellant's alleged non-compliance with the Act do not make them parties to the Minister's decision to revoke.
2. The Proposed Respondents do not meet either ground of this Court's test for joinder. The Proposed Respondents are not persons who ought to have been made parties by the Appellant and their participation is not necessary for the determination of the issues raised by the Appellant in its appeal.
3. The Proposed Respondents' motion to be added to the appeal as respondents should be dismissed, with costs.

PART I: STATEMENT OF FACTS

4. The Proposed Respondents are Independent Jewish Voices Canada Inc., Rabbi David Mivasair, and Dr. Ismail Zayid.
5. Between October of 2017 and February of 2019, the Proposed Respondents communicated to the then Minister of National Revenue (the “Minister”), the Canada Revenue Agency (the “CRA”), and the then Parliamentary Secretary to the Minister (the “Parliamentary Secretary”) about the Appellant’s eligibility for charitable registration.¹
6. The Proposed Respondents alleged the Appellant was violating the *Income Tax Act* (the “Act”),² official Canadian policy, international law, and the CRA’s guidelines and policies, in part, by raising and sending funds overseas.³
7. They supported their allegations with reference to publicly available information, including information obtained from Global Affairs Canada through an access to information and privacy request,⁴ the CRA’s website,⁵ the Appellant’s websites,⁶ and the media.⁷
8. In their communications, the Proposed Respondents asked the then Minister and her delegates to initiate an audit of the Appellant⁸ and to revoke the

¹ Affidavit of David Mivasair, affirmed August 14, 2024, Proposed Respondents’ Motion Record [PRMR], Tab 2, p 2, paras 4-9, Exhibits “A”, “B”, “C” and “D”, (PDF p 9, 11, 97, 155) [Mivasair Affidavit].

² [RSC, 1985, c. 1 \(5th Supp.\)](#).

³ See e.g., Mivasair Affidavit, PRMR, Tab 2, para 4, Exhibit “A” (PDF p 9, 12, 14).

⁴ See e.g., Mivasair Affidavit, PRMR, Tab 2, para 4, Exhibit “A” (PDF p 9, 29).

⁵ See e.g., Mivasair Affidavit, PRMR, Tab 2, para 4, Exhibit “A” (PDF p 9, 28, 38).

⁶ See e.g., Mivasair Affidavit, PRMR, Tab 2, para 4, Exhibit “A” (PDF p 9, 12, 45, 48, 53, 59).

⁷ See e.g., Mivasair Affidavit, PRMR, Tab 2, para 8, Exhibit “C” (PDF p 9, 125).

⁸ Mivasair Affidavit, PRMR, Tab 2, paras 4-6, Exhibit “A”, (PDF p 9, 12).

Appellant's registration.⁹ They also sought to understand the basis of the CRA's findings, if the CRA had investigated and found the Appellant was in compliance with the Act.¹⁰

9. Pursuant to subsection [168\(1\)](#) of the Act, the Minister issued a notice of intention to revoke the Appellant's registration dated August 20, 2019 (the "NITR").¹¹ The Minister confirmed the NITR on June 26, 2024.¹²
10. The Appellant filed its notice of appeal on July 24, 2024.¹³
11. The Minister's delegate revoked the Appellant's registration by publication of the NITR in the *Canada Gazette* on August 10, 2024.¹⁴

PART II: POINT IN ISSUE

12. The issue in this motion is whether the Proposed Respondents meet the established test to be added as respondents in the appeal.

PART III: SUBMISSIONS

13. In relying only on [Rule 338](#) of the *Federal Courts Rules*¹⁵ rather than the two grounds in the established test for joinder set out in [Rule 104](#), the Proposed Respondents overlook the Act's revocation scheme and disregard how the Minister's powers, duties, and functions are delegated. They fail to establish that they are proper respondents in the appeal.

⁹ Mivasair Affidavit, PRMR, Tab 2, para 7, Exhibit "B", (PDF p 9, 98).

¹⁰ Mivasair Affidavit, PRMR, Tab 2, para 9, Exhibit "D", (PDF p 9, 157).

¹¹ Appellant's Notice of Appeal, PRMR, Tab 4, p 3 (PDF p 177).

¹² Appellant's Notice of Appeal, PRMR, Tab 4, p 3 (PDF p 177).

¹³ Appellant's Notice of Appeal, PRMR, Tab 4, p 1 (PDF p 175).

¹⁴ *Canada Gazette*, Part I, Vol. 158, No. 32, p [2759](#).

¹⁵ [SOR/98-106 \[Rules\]](#).

14. Under [Rule 104\(1\)\(b\)](#) this Court may order that “a person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined be added as a party.” If neither ground is met, the person should not be added as a party to the proceeding.

A. Ground #1: the Proposed Respondents ought not to be joined

15. To determine whether a person “ought to have been joined as a party”, the court must first establish “what is truly in issue in the underlying proceeding.”¹⁶ The first ground “presupposes that there be a requirement, either in the statute pursuant to which the proceeding was initiated, or in the Federal Courts Rules, that the person be named as a party.”¹⁷ In this case, the Appellant is challenging the Minister’s decision to revoke pursuant to paragraph [172\(3\)\(a.1\)](#) of the Act.¹⁸
16. Paragraph [180\(1\)\(a\)](#) of the Act specifies that appeals pursuant to paragraph [172\(3\)\(a.1\)](#) are instituted by filing a notice of appeal in this Court within 30 days from the day on which the Minister notifies the person of the confirmation under subsection [165\(3\)](#) of the Act. These appeals are to be heard and determined in a summary way.¹⁹ This Court has characterized these proceedings as “an appellate review of a decision based on the record that was before the decision maker.”²⁰ They are “not a trial *de novo* or other

¹⁶ Reference re [subsection 18.3\(1\) of the Federal Courts Act, R.S.C. 1985, c. F-7, 2019 FC 261](#) para 2, citing *Canada (Attorney General) v Canadian Doctors for Refugee Care*, [2015 FCA 34](#).

¹⁷ Reference re [subsection 18.3\(1\) of the Federal Courts Act, R.S.C. 1985, c. F-7, 2019 FC 261](#) para 28.

¹⁸ Appellant’s Notice of Appeal, PRMR, Tab 4, p 3 (PDF p 177).

¹⁹ [Act, s 180\(3\)](#).

²⁰ *Humane Society of Canada for the Protection of Animals and the Environment v Canada (National Revenue)*, [2013 FCA 154](#), para 17 [emphasis added].

similar proceeding that is grounded in pleadings.”²¹ The Minister is the decision maker here, not the Proposed Respondents.

17. Although the Proposed Respondents’ evidence shows they communicated to the Minister prior to the NITR being issued, their assertion that these communications lead to the Appellant’s revocation is speculative. Parliament has legislated that only certain officers and employees of the CRA are authorized to exercise or perform the Minister’s powers, duties, or functions under the Act.²²
18. Only the Minister and her delegates have the authority and discretionary power under the Act to audit registered charities,²³ issue NITRs,²⁴ reconsider, vacate, or confirm objections,²⁵ revoke,²⁶ and make public the Minister’s letters to the charity relating to the grounds for revocation.²⁷ Until revocation has occurred, the Minister and her delegates are prohibited from publicly disclosing whether a charity is under audit, has received an NITR, or has objected to an NITR.²⁸ As noted above, the Proposed Respondents’ communications to the Minister explicitly acknowledge only the Minister can investigate, audit, and revoke.
19. Unlike the successful appellant in *North Brewing Company*, who relied on [section 45](#) of the *Trademarks Act*, RSC 1985, c T-13 to ground its claim, the

²¹ *Ibid.*

²² [Act, s 220\(1\),\(2\),\(2.01\)](#); [Canada Revenue Agency Act](#), SC 1999, c 17, s 6-9; [Income Tax Act – Authorization to exercise powers or perform duties of the Minister of National Revenue](#), Canada Revenue Agency.

²³ Act, [s 231](#), [231.1](#).

²⁴ Act, [s 168\(1\)](#).

²⁵ Act, [s 165\(3\)](#), [168\(4\)](#).

²⁶ Act, [s 168\(2\)](#).

²⁷ Act, [s 241\(3.2\)\(e\)](#).

²⁸ Act, [s 241](#), [149.1\(15\)](#).

Proposed Respondents have not identified any provision in the Act pursuant to which they “ought” to be named as parties to the Minister’s decision to revoke.²⁹

20. In addition to the Act’s requirements, [Rule 2](#) defines an “[appeal](#)” as a proceeding referred to in [Rule 335](#) and a “[party](#)” in respect of an appeal as an appellant or respondent. By virtue of [Rule 335\(c\)](#), appeals to this Court “under an act of Parliament, unless otherwise indicated in that Act or these Rules,” are governed by [Part 6](#) of the Rules.
21. As noted by the Proposed Respondents, in instituting an appeal under [Part 6](#) of the Rules, an appellant must include “every party in the first instance who is adverse in interest to the appellant in the appeal” as a respondent.³⁰ First instance refers to a proceeding in the Federal Court, Tax Court of Canada, or the tribunal whose order is under appeal.³¹
22. In this case, the Proposed Respondents were not parties to the proceedings before the Minister. The Proposed Respondents had no delegated authority under the Act with respect to the issuance of the NITR and notice of confirmation. Nor did the Proposed Respondents have any right to be informed of the Minister’s decision to revoke or any right to object or appeal the Minister’s decision under the Act.

B. Ground #2: the Proposed Respondents’ participation is not necessary

23. The Proposed Respondents do not address the necessity ground of [Rule 104\(1\)\(b\)](#) and offer no explanation as to why their presence before the Court

²⁹ *North Brewing Company Ltd. v Canada (Registrar of Trademarks)*, [2022 CanLII 94943 \(FC\)](#), p 5.

³⁰ Rules, [s 338\(1\)\(a\)](#).

³¹ Rules, [s 336](#).

is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined.

24. The well-established test for determining necessity pursuant to [Rule 104](#) was set out by this Court's reference to English case law in *Stevens v Canada (Commissioner, Commission of Inquiry)*:

...The person to be joined must be someone whose presence is necessary as a party. What makes a person a necessary party? It is not, of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately. That would mean that on the construction of a clause in a common form contract many parties would claim to be heard, and if there were power to admit any, there is no principle of discretion by which some could be admitted and others refused. The court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it is necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party. [Emphasis in original.]³²

25. Subsequent jurisprudence characterizes the test as whether it is necessary to grant party status to “completely adjudicate and settle the issues raised” in the proceeding.³³ In the notice of appeal, the Appellant raises the grounds of reasonable apprehension of bias due to public pressure on the Minister, Ministerial error in applying the law to the facts, and a procedural argument as reasons why the revocation should be quashed or vacated.³⁴ The Proposed Respondents offer no explanation as to how their participation in the appeal would assist the Court in adjudicating the matters in dispute.

³² [1998] [4 F.C. 125](#) (FCA), para 20 [*Stevens*].

³³ *Air Canada v Thibodeau*, [2012 FCA 14](#), para 12.

³⁴ Appellant's Notice of Appeal, PRMR, Tab 4, p 3-4 (PDF p 177-178).

Rather, in asserting their communications led to the Appellant's revocation, the Proposed Respondents rely on a post on the Appellant's website instead of any statutory authority or allegation in the notice of appeal.³⁵

26. In this proceeding, the Court will ultimately conduct an appellate review of the decision based on the record that was before the Minister. There are no witnesses. If the Minister's decision is quashed or vacated, only the Minister will be bound by the result. In this regard, the Proposed Respondents would be no more directly affected by the outcome than any other taxpayers who consider themselves adverse in interest to the potential restoration of the Appellant's charitable registration. A mere interest in the outcome is not sufficient to justify adding the Proposed Respondents as parties to the appeal.³⁶

PART IV: ORDER SOUGHT

27. The Proposed Respondents' motion should be dismissed, with costs payable forthwith pursuant to Rules [400\(6\)](#) and [401](#).

³⁵ Written Representations of the Moving Parties, PRMR, Tab 3, p 5, para 14 (PDF p 171).

³⁶ See e.g., *Apotex Inc. v Warner-Lambert Canada Inc.*, [2001 FCA 116](#), paras 5-10.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the city of Ottawa, in the Province of Ontario, this 30th day of August, 2024.



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PART V: AUTHORITIES

Legislation

Canada Revenue Agency Act, SC 1999, c 17

Federal Courts Rules, SOR/98-106

Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.)

Caselaw

Air Canada v Thibodeau, [2012 FCA 14](#)

Apotex Inc. v Warner-Lambert Canada Inc., [2001 FCA 116](#)

Canada (Attorney General) v Canadian Doctors for Refugee Care, [2015 FCA 34](#)

Humane Society of Canada for the Protection of Animals and the Environment v Canada (National Revenue), [2013 FCA 154](#)

North Brewing Company Ltd. v Canada (Registrar of Trademarks), [2022 CanLII 94943](#)

Reference re subsection 18.3(1) of the Federal Courts Act, R.S.C. 1985, c. F-7, [2019 FC 261](#)

Stevens v Canada (Commissioner, Commission of Inquiry), [1998] [4 F.C. 125](#) (FCA)

Secondary Sources

Canada Gazette, Part I, Vol. 158, No. 32, p [2759](#)

Income Tax Act – Authorization to exercise powers or perform duties of the Minister of National Revenue, Canada Revenue Agency