Federal Court of Appeal  Cour d'appel fédérale

Date: 20190130

Docket: A-147-17

Citation: 2019 FCA 21

CORAM: **PELLETIER J.A.**
NEAR J.A.
WOODS J.A.

BETWEEN:

ARK ANGEL FOUNDATION

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Vancouver, British Columbia, on January 31, 2018.

Judgment delivered at Ottawa, Ontario, on January 30, 2019.

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: PELLETIER J.A.
NEAR J.A.

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REASONS FOR JUDGMENT

WOODS J.A.

[1] Ark Angel Foundation (Foundation) appeals in respect of a notice of intention to revoke its charitable registration (Revocation Proposal) under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (Act). The appeal was taken directly to this Court pursuant to paragraph 172(3)(*a.1*) of the Act.

[2] The Revocation Proposal was issued by the Minister of National Revenue on April 22, 2015 pursuant to subsection 168(1) of the Act. The revocation will take effect if and when a copy of the Revocation Proposal is published in the *Canada Gazette* (subsection 168(2) of the Act).

[3] The appeal raises two issues:

(a) Did the Minister err in issuing the Revocation Proposal?

(b) Did the administrative process leading up to the issuance of the Revocation Proposal breach rules of natural justice and procedural fairness?

I. Background

A. *The Foundation*

[4] The Foundation was incorporated in 1998 under the *Canada Corporations Act*, R.S.C. 1970, c. C-32 and received registration under the Act as a charitable foundation in the same year.

[5] The Revocation Proposal was issued following an audit of the Foundation which commenced in 2011 for the period from December 1, 2008 to November 30, 2010. During the audit period, the Foundation's activities were relatively modest. It received aggregate revenue in the amount of $45,330 and made expenditures in the amount of $44,740.

[6] The operations of the Foundation were managed by one of its directors, Michael O'Sullivan. Mr. O'Sullivan was also a director of three other registered charities - Ark Angel Fund, Humane Society of Canada Foundation, and Humane Society of Canada for the Protection of Animals and the Environment. According to the records provided during the audit, "most of the funds received and disbursed by the [Foundation] were received or made to registered charities for which Mr. O'Sullivan was a director" and in which he "controlled the day to day operations" (appeal book at p. 18).

[7] The Minister had also issued a notice of intent to revoke the registration of one of the above organizations on grounds similar to those invoked in the Revocation Proposal (*Humane Society of Canada for the Protection of Animals and the Environment v. Minister of National Revenue*, 2015 FCA 178, 474 N.R. 79, leave to appeal to SCC refused, 36688 (March 10, 2016)).

B. *The administrative process*

[8] The administrative process involved the issuance of three notices to the Foundation: an administrative fairness letter, the Revocation Proposal, and a notice of confirmation. The correspondence which is related to these notices is relevant to the issues in this appeal. Accordingly, the key pieces of correspondence are summarized below.

(1) Administrative fairness letter

[9] On March 7, 2014, the Audit Division of the CRA issued an administrative fairness letter. The stated purpose of the letter was to describe areas of non-compliance identified during the audit and to provide the Foundation with an opportunity to respond. The letter sets out two general areas of non-compliance: a failure to maintain adequate books and records and a failure to devote all of the Foundation's resources to charitable activities.

[10] With respect to books and records, the letter referred to subsection 230(2) of the Act, which includes a requirement that a charity maintain sufficient information to enable the Minister to determine whether there are any grounds to revoke the charity's registration (paragraph 230(2)(*a*)). There was no issue with respect to the recording of revenue or expenditure in the books of account; these were determined to be accurate. The main problem identified was that the records did not demonstrate sufficient board oversight or internal controls. The CRA also expressed concern that Mr. O'Sullivan appeared to have "absolute authority in all phases of the [Foundation's] operations" (appeal book at p. 64).

[11] The administrative fairness letter also raised a particular concern with respect to consulting fees paid to Mr. O'Sullivan in the amounts of $10,006 for 2009 and $5,264 for 2010. The CRA concluded that the invoices for these fees did not provide sufficient detail regarding the work that was performed.

[12] With respect to the second area of non-compliance, which is related to the first, the administrative fairness letter informed the Foundation that it was required to use its resources only for charitable activities undertaken by itself or for gifting to "qualified donees", as that term defined in the Act. The CRA was not able to verify compliance with this requirement given the inadequacy of the books and records and it also noted that there were significant expenditures for consulting, travel, and management/administration.

[13] In light of these concerns, the CRA proposed that a penalty be imposed pursuant to paragraph 188.2(2)(*a*) of the Act due to the inadequacy of the books and records. The sanction would prohibit the Foundation from issuing donation receipts for a period of one year.

[14] The Foundation was given 30 days to provide further representations, and was informed that the Director General of the Charities Directorate would decide on the appropriate course of action after that. It was explicitly mentioned that the Director General could decide to revoke the charitable registration rather than issuing the one-year suspension, as proposed.

[15] The Foundation responded by letter from counsel dated April 10, 2014. For the most part, the response did not specifically address the concerns raised in the administrative fairness letter. In particular, the response did not attempt to describe or justify the charitable purpose of the expenditures that the CRA was concerned about. Instead, the Foundation took issue with the CRA's interpretation of the statute and sought a significant amount of additional information and documentation.

(2) Revocation Proposal

[16] In light of the Foundation's response, which was interpreted by the CRA as evidence of the Foundation's unwillingness to comply with the Act, it was decided that a harsher penalty was warranted. Accordingly, on April 22, 2015 the Director General of the Charities Directorate issued the Revocation Proposal on behalf of the Minister.

[17] In the Revocation Proposal, the CRA provided reasons to support its decision to issue a notice of intention to revoke. The reasons reference the concerns originally addressed in the administrative fairness letter and they respond to some of the issues raised by counsel for the Foundation in their letter dated April 10, 2014.

[18] With respect to books and records, the Revocation Proposal considered three concerns raised by the Foundation: (1) the Act does not describe the specific books and records to be kept, (2) the Act does not require detailed board minutes, and (3) the Foundation had procedures for cheque signing which require two signatures for amounts over $25,000 (appeal book at p. 41-43).

[19] The CRA took the position that the Foundation had not kept the books and records necessary to comply with section 230 of the Act, and pursuant to paragraph 168(1)(*e*), this was a basis upon which the Foundation's charitable status could be revoked. The CRA commented that the Foundation "has a legal responsibility to maintain information which supports its charitable nature" and that "the records provided fail to demonstrate what Mr. Michael O'Sullivan was

consulting upon or how it related to the charitable mandate of the [Foundation]" (appeal book at p. 41). Further, the lack of detailed board minutes and inadequate cheque signing procedures showed a lack of due diligence that resulted in the CRA not being able to ensure compliance with the Act.

[20] With respect to devoting all its resources for charitable purposes, the Revocation Proposal considered two arguments raised by the Foundation: (1) the CRA applied the wrong test because the administrative fairness letter refers to devoting resources to charitable activity which is not required of a charitable foundation, and (2) the Foundation did not confer a personal benefit on the directors (appeal book at p. 43-44).

[21] The CRA responded by setting out the statutory definition of "charitable foundation" in subsection 149.1(1) of the Act. This requires that the organization be "constituted and operated exclusively for charitable purposes." The CRA stated its view that this definition requires a public foundation to "devote its resources either to charitable activity carried on by it or as gifts to qualified donees" (appeal book at p. 43). In light of the lack of supporting records, the CRA concluded that "it could not be ascertained that the activities carried out by Mr. O'Sullivan were those of the [Foundation] or whether the related expenses incurred were personal in nature" (appeal book at p. 43). The CRA stated that, in its view, the Foundation had failed to comply with the Act's requirements for charitable registration, and therefore under the authority of paragraph 168(1)(*b*) of the Act the CRA proposed to revoke the Foundation's registration.

[22] The Foundation was informed that it could file a notice of objection within 90 days from the mailing of the Revocation Proposal.

(3) Notice of objection

[23] A notice of objection was filed by the Foundation on July 20, 2015 which dealt mainly with the audit process rather than the substantive issues raised in the Revocation Proposal (appeal book at p. 25-37). Several perceived deficiencies with the audit process were raised:

- the reasons in the Revocation Proposal are inadequate,
- CRA officials were biased,
- there was a lack of opportunity to cross-examine CRA officials, and
- there was inadequate disclosure of the case to be met,

[24] With respect to the substantive issues, the Foundation submitted that:

- the CRA conceded that the required records were kept when the CRA stated that it "has difficulty relying on the information provided" (appeal book at p. 34),
- the CRA reliance on a lack of due diligence has no statutory basis, and
- it is unreasonable to revoke a charity's registration without giving the charity the opportunity to rebut "assumptions of fact."

[25] The Appeals Directorate responded to the objection by letter dated February 6, 2017 (appeal book at p. 17-24). It reiterated the CRA's concern regarding the consulting fees paid to Mr. O'Sullivan and addressed a number of submissions that the Foundation had made in its

objection and in earlier representations. The Appeals Directorate proposed to confirm the Revocation Proposal, subject to the receipt of further representations.

[26] The Foundation provided further representations by letter dated March 20, 2017. It requested that the Appeals Directorate address several alleged deficiencies with the letter of February 6, 2017, and did not provide any meaningful response to the substantive concerns raised in the Revocation Proposal.

(4) Notice of confirmation

[27] The Revocation Proposal was confirmed by letter dated April 4, 2017. The confirmation noted that the Foundation's further representations did not address the areas of non-compliance that had been previously been raised by the Appeals Directorate.

II. Analysis

A. *Did Minister err in issuing the Revocation Proposal?*

[28] The Minister stated two reasons for issuing the Revocation Proposal: a failure to maintain adequate books and records and a failure to devote all the Foundation's resources to charitable purposes. The Minister considered that either failure would be sufficient grounds in itself to issue the Revocation Proposal.

[29] These two grounds will be considered separately below. Before doing so, it is necessary to consider the standard of review.

[30] In reviewing this type of ministerial decision, this Court has generally concluded that a reasonableness standard of review should apply to issues of fact and mixed fact and law, while a correctness standard should apply to questions of law (*Prescient Foundation v. Canada (National Revenue)*, 2013 FCA 120, 358 D.L.R. (4th) 541 at paras. 12-13; *Opportunities for the Disabled Foundation v. Canada (National Revenue)*, 2016 FCA 94, 482 N.R. 297 at para. 16).

[31] Subsequent to this Court's decision in *Prescient Foundation*, there have been many developments regarding standards of review in the administrative law context. It is not necessary to discuss these developments here, mainly because I would reach the same conclusion on questions of law decided by the Minister regardless of the standard of review.

[32] I turn now to the Minister's decision with respect to the alleged failure to maintain books and records as required by the Act.

(1) Failure to maintain adequate books and records required by the Act

[33] The relevant legislative provisions regarding the failure to maintain adequate books and records are paragraphs 168(1)(*e*) and 230(2)(*a*) of the Act. These provisions give the Minister the discretionary authority to issue a notice of intention to revoke the registration of a qualified donee, as defined in the Act, if the qualified donee has not kept required records and books of

account. The Foundation, as a public foundation within the meaning ascribed by the Act, is a qualified donee and subject to these provisions (see definition of "qualified donee" and "public foundation" in subsection 149.1(1), and "registered charity" in subsection 248(1) of the Act).

[34] The relevant parts of these provisions are reproduced below.

168.(1) The Minister may, by registered mail, give notice to a person described in any of paragraphs (*a*) to (*c*) of the definition qualified donee in subsection 149.1(1) that the Minister proposes to revoke its registration if the person	**168.(1)** Le ministre peut, par lettre recommandée, aviser une personne visée à l'un des alinéas *a*) à *c*) de la définition de donataire reconnu au paragraphe 149.1(1) de son intention de révoquer l'enregistrement si la personne, selon le cas :
…	[…]
(*e*) fails to comply with or contravenes any of sections 230 to 231.5; or	*e*) omet de se conformer à l'un des articles 230 à 231.5 ou y contrevient;
…	[…]
230.(2) Every qualified donee referred to in paragraphs (*a*) to (*c*) of the definition qualified donee in subsection 149.1(1) shall keep records and books of account — in the case of a qualified donee referred to in any of subparagraphs (*a*)(i) and (iii) and paragraphs (*b*) and (*c*) of that definition, at an address in Canada recorded with the Minister or designated by the Minister — containing	**230.(2)** Chaque donataire reconnu visé aux alinéas *a*) à *c*) de la définition de donataire reconnu au paragraphe 149.1(1) doit tenir des registres et des livres de comptes — à une adresse au Canada enregistrée auprès du ministre ou désignée par lui, s'il s'agit d'un donataire reconnu visé aux sous-alinéas *a*)(i) ou (iii) ou aux alinéas *b*) ou c) de cette définition — qui contiennent ce qui suit :
(*a*) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;	*a*) des renseignements sous une forme qui permet au ministre de déterminer s'il existe des motifs de révocation de l'enregistrement de l'organisme ou de l'association en vertu de la présente loi;
…	[…]

[35] The Minister focussed principally on the records relating to the consulting fees paid to Mr. O'Sullivan, and concluded that the records "fail to demonstrate what Mr. Michael O'Sullivan was consulting upon or how it related to the charitable mandate of the [Foundation]." In light of this finding, the Minister determined that the Foundation failed to comply with its "legal responsibility to maintain information which supports its charitable nature" (appeal book at p. 41).

[36] The factual conclusions reached by the Minister are amply supported by the record.

[37] It is worth mentioning that paragraph 230(2)(*a*) of the Act does not explicitly set out the types of books and records that are required. This could lead to a technical failure to comply with this provision, but not one of such significance to justify revoking a registration. This point was made in *Prescient Foundation*, where Mainville J.A. pointed out that revocation should be limited to instances of "material or repeated non-compliance" (*Prescient Foundation* at para. 51).

[38] In the present appeal, however, the failure was significant. Essentially, the Foundation failed to provide any records that demonstrated what consulting services Mr. O'Sullivan provided for the fees he received. Although one of the invoices appears to give some detailed information by listing names of consulting projects, the Foundation failed to provide any support that the named projects were *bona fide*. Needless to say, a bald reference to consulting projects in an invoice that cannot be corroborated with other evidence does not satisfy the records requirement of the Act.

[39] It was reasonable for the Minister to conclude that the failure to maintain supporting documentation to enable verification of the consulting fees paid to Mr. O'Sullivan justified the revocation of the registration, especially since, as pointed out by the Minister, the Foundation showed no willingness to comply in the future (appeal book at p. 38).

[40] The Foundation raises several issues in defence of its compliance with the Act.

[41] First, the Foundation submits that it provided "extensive books and records," as required by paragraph 230(2)(*a*) of the Act (appellant's memorandum at para. 72). This is a stark example of a bald statement without support. Other than invoices which the Minister reasonably viewed as being inadequate, the Foundation has not directed this Court's attention to any books or records that would address the CRA's concerns.

[42] Second, the Foundation submits that the Minister cannot reasonably issue a notice of intention to revoke a registration without taking the first step of specifying the particular books and records that should be kept in accordance with subsection 230(3) of the Act.

230.(3) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.	**230.(3)** Le ministre peut exiger de la personne qui n'a pas tenue les registres et livres de compte voulus pour l'application de la présente loi qu'elle tienne ceux qu'il spécifie. Dès lors, la personne doit tenir les registres et livres de compte qui sont ainsi exigés d'elle.

[43] This submission is rejected in light of jurisprudence of this Court. This Court has held that if a charity's books and records are insufficient for the CRA to assess whether the charity is

in compliance with its obligations under the Act, this may be sufficient ground upon which to revoke the charity's charitable status (*Humane Society* at paras. 76-79; *Opportunities for the Disabled Foundation* at paras. 37-39).

[44] Throughout the audit and appeals process, the CRA informed the Foundation of their concerns regarding the books and records and the Foundation did not meaningfully respond to those concerns. In order to avoid the imposition of a sanction, a charity ought to do more than provide non-responsive submissions or simply deny that their records are inadequate.

[45] Finally, the Foundation submits that the Revocation Proposal did not rely on the proper legislative provision. It is suggested that the Minister relied on subsection 230(3) of the Act rather than subsection 230(2) since the Revocation Proposal used the heading "Failure to maintain adequate books and records".

[46] This submission is frivolous. Although the Revocation Proposal does not refer explicitly to paragraph 230(2)(*a*) of the Act, it is clear that this is the provision that the Minister relied on (appeal book at p. 41-42).

[47] In my view, no error was made by the Minister in concluding that the failure to keep adequate books and records justified the Revocation Proposal. I turn now to the second ground in support of revocation.

(2) Failure to devote all resources to charitable purposes

[48] Pursuant to paragraph 168(1)(*b*) of the Act, the Minister has the discretion to issue a notice of intent to revoke a charitable registration if a charity ceases to comply with the requirements of the Act for registration.

168.(1) The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition qualified donee in subsection 149.1(1) that the Minister proposes to revoke its registration if the person	**168.(1)** Le ministre peut, par lettre recommandée, aviser une personne visée à l'un des alinéas a) à c) de la définition de donataire reconnu au paragraphe 149.1(1) de son intention de révoquer l'enregistrement si la personne, selon le cas :
…	[…]
(*b*) ceases to comply with the requirements of this Act for its registration;	*b*) cesse de se conformer aux exigences de la présente loi relatives à son enregistrement;
…	[…]

[49] The registration requirement that is relevant in this case stems from the definition of the term "charitable foundation" in subsection 149.1(1) of the Act.

"charitable foundation" means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization;	**« fondation de bienfaisance »** Société ou fiducie constituée et administrée exclusivement à des fins de bienfaisance, dont aucun revenu n'est payable à un propriétaire, membre, actionnaire, fiduciaire ou auteur de la fiducie ou de la société ou ne peut par ailleurs être disponible pour servir au profit personnel de ceux-ci, et qui n'est pas une oeuvre de bienfaisance.

[50] This term is included as part of the definition of “public foundation” in subsection 149.1(1) of the Act. The Foundation is required to be a public foundation by virtue of the definition of “registered charity” in subsection 248(1) of the Act.

[51] In the Revocation Proposal, the Minister concluded that the Foundation was no longer a charitable foundation, as defined, because it did not devote all of its resources either to charitable activities or as gifts to “qualified donees”, as that term is defined in subsection 149.1(1) of the Act.

[52] In this regard, the Minister concluded that since the consulting activity was not properly documented, the Foundation “was unable to demonstrate by any means that no personal or undue benefits were conferred to the directors …” (appeal book at p. 44). This conclusion was also supported by other factors. In particular, the Minister noted that similar deficiencies were identified in two other organizations in which Mr. O’Sullivan was a director, Mr. O’Sullivan had access to the revenue of all three organizations, and he was responsible for their day-to-day activities (appeal book at p. 44).

[53] The Minister’s reasons were supplemented after the Foundation filed a notice of objection. The Appeals Directorate noted that most of the funds received and disbursed by the Foundation were to registered charities in which Mr. O’Sullivan was a director and therefore it could not be determined that any consulting work could be justified in the circumstances (appeal book at p. 18).

[54] It was reasonable for the Minister to conclude that the payment of the consulting fees was a use of the Foundation's resources that was not for charitable purposes, and that this justified the issuance of the Revocation Proposal.

[55] In the Foundation's memorandum of fact and law, three main arguments were raised.

[56] First, the Foundation submits that the Minister ignores "that a charity fulfils the statutory definition of charitable purposes by making disbursements to qualified donees" (appellant's memorandum at para. 83).

[57] In this case, the question is not whether the Minister ignored gifts to qualified donees, but whether the Foundation used some of its resources to pay Mr. O'Sullivan for purposes that were not charitable. As noted above, given the paucity of supporting information, it was reasonable for the Minister to conclude that some of the expenses incurred were not incurred for charitable purposes.

[58] Second, the Foundation suggests that it: "submitted 21 pages of representations and documentary evidence setting out the nature of the consulting undertaken … detailing how the activities carried out were those of the [Foundation] and not personal in nature. … [t]hese representations demolished the Minister's assumption that the consulting was personal activity of Mr. O'Sullivan …" (appellant's memorandum at paras. 85-86).

[59] The reference above to 21 pages of representations is to answers provided to questions posed by the auditor. The questions related not only to the Foundation but also to two other charities that were also being audited - Ark Angel Fund and Humane Society of Canada Foundation (appeal book at p. 301-322). In the 21 pages, there is scarcely any mention of activities undertaken by the Foundation. I could only locate two material references to the Foundation in this material:

- In response to a request for details of the services provided by Mr. O'Sullivan, the Foundation stated that, with respect to the Foundation and Humane Society of Canada Foundation, Mr. O'Sullivan "is the primary person responsible for securing individual donations, large gifts, corporate sponsorships, foundation grants and legacies, maintaining donor relations, public relations and managing any fundraising campaigns" (appeal book at p. 306).
- In a subsequent request for information as to how the payments to Mr. O'Sullivan are allocated, the Foundation stated that the fundraising activities were allocated to Humane Society of Canada Foundation and charitable activities were allocated to Ark Angel Fund. It was not suggested that anything was allocated to the Foundation (appeal book at p. 301).

[60] Given the non-responsiveness of the Foundation's submissions, it was not unreasonable for the Minister to conclude that the fees paid for Mr. O'Sullivan's services were not incurred for charitable purposes.

[61] Third, the Foundation submits that where supporting documentation is not available, "credible oral evidence from a taxpayer is sufficient" (appellant's memorandum at para. 91).

[62] It is abundantly clear from the record that the Minister was always open to receiving information from the Foundation above and beyond what was in the books and records. The problem is that the information that was provided did not address the fundamental concerns that the Minister had.

[63] In conclusion, the Foundation has failed to demonstrate that the Minister's decision was unreasonable.

[64] I will now turn to the alleged breaches of natural justice or procedural fairness.

B. *Was there a breach of natural justice or procedural fairness?*

[65] The Foundation submits that the Revocation Proposal should be quashed for breaches of natural justice and procedural fairness. The alleged breaches fall generally into four categories:

- failure to provide an opportunity to be heard,
- failure to provide relevant documents for the tribunal record,
- failure to inform the Foundation of the case it must meet, and
- bias on the part of the CRA officials dealing with this matter.

[66] These issues will be reviewed on a standard of correctness (*Canadian Pacific Railway Company v. Canada (Attorney General*), 2018 FCA 69 at para. 34).

(1) Failure to provide the Foundation with an opportunity to be heard

[67] The Foundation submits that the administrative process breached the requirement of procedural fairness that it have the opportunity to be heard. There are two main arguments: (1) the appeals officer failed to review the entire file, and (2) the Minister refused to engage the Foundation regarding legal issues that the Foundation had raised.

[68] The Foundation submits that it was deprived of the opportunity to be heard by the Appeals Directorate because the appeals officer assigned to the matter acknowledged that he did not recall reviewing some of the documents that were before the auditor, which due to their volume were filed only in the audit file of Ark Angel Fund (appellant's memorandum at para. 51). Ark Angel Fund was also under the day-to-day control of Mr. O'Sullivan and was under audit at the same time as the Foundation.

[69] The mere fact that some documents that were before the auditor were not reviewed by the appeals officer is not sufficient to establish a breach of procedural fairness. There cannot possibly be unfairness where the Foundation has failed to point to missed documents that are material to the case (see *Figueroa v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FCA 12 at para. 10).

[70] Many of the documents that the appeals officer failed to review have nothing to do with the Foundation. Also, according to the Minister's submissions, the documents contained in the Ark Angel Fund audit file that were not reviewed by the appeals officer did not contain any documents that had been provided by the Foundation, that were not duplicated elsewhere in the file that was reviewed by the appeals officer (respondent's memorandum at para. 85). As such, there is no evidence that any relevant document was not reviewed by the appeals officer (respondent's memorandum at para. 85).

[71] The failure of the appeals officer to read certain documents is not, in these circumstances, a breach of procedural fairness.

[72] The Foundation also submits that the Minister did not provide it with a full opportunity to respond to the case against it. The basis for this alleged breach is that "it is not permissible for the Minister to ignore arguments based upon the law and restrict its engagement to allegations regarding the facts" (appellant's memorandum at para. 67).

[73] I disagree with this submission. The question is whether the Foundation has had an opportunity to respond to the CRA's concerns. This obligation is satisfied when the decision-maker considered the submissions that the Foundation presented. In this regard, "a decision maker is assumed to have weighed and considered all the evidence presented to it unless the contrary is shown" (*Boulos v. Canada (Public Service Alliance),* 2012 FCA 193 at para. 11). The Foundation has not demonstrated that the CRA failed to consider any of its representations.

(2) Failure to provide complete documents for the tribunal record

[74] The Foundation submits that the Minister breached procedural fairness by failing to provide a complete set of documents of the tribunal record for purposes of this appeal. A particular concern was raised that there were no documents relating to the Minister's decision to change the penalty from a one-year loss of receipting privileges to revocation (appellant's memorandum at paras. 57, 62). It is suggested that the Minister's decision should therefore be vacated.

[75] These circumstances do not result in a breach of procedural fairness. A procedure is available under the *Federal Courts Rules*, S.O.R./98-106 to rectify any deficiencies with the tribunal record and the Foundation failed to take advantage of this procedure. The relevant provisions are sections 317 and 318 of the Rules.

[76] Not only did the Foundation refrain from requesting documents pursuant to the Rules, but it explicitly approved of the tribunal record when the Foundation's counsel certified that the contents of the appeal book were complete (appeal book at p. 919).

[77] In the circumstances, there is no basis for the Foundation to now argue that the Revocation Proposal should be vacated due to an incomplete tribunal record.

(3) Failure to inform of the case to meet

[78] The Foundation submits that the Minister breached procedural fairness by not properly informing it of the case it had to meet, including giving notice of the proposed sanction, prior to the Revocation Proposal being issued.

[79] I disagree. The Revocation Proposal clearly informed the Foundation of the specific case it had to meet, and the Foundation was given two opportunities to respond during the appeals process. This was adequate notice of the case the Foundation has to meet (*Christ Apostolic Church of God Mission International v. The Minister of National Revenue*, 2009 FCA 162, 2009 D.T.C. 5935 at para. 3).

[80] The Foundation raised three main points regarding this alleged breach.

[81] First, the Foundation refers in support to the following excerpt from the minority opinion of this Court's decision in *Renaissance International v. Canada (National Revenue),* [1983] 1 F.C. 860 at p. 866, 142 D.L.R. (3d) 539 at p. 544:

> … On the contrary, those provisions, as I read them, rather suggest that the Minister, before sending the notice, must first give to the person or persons concerned a reasonable opportunity to answer the allegations made against them.
>
> [Emphasis added.]

[82] The reference to *Renaissance International* does not assist the Foundation because the legislative scheme that was applicable in that case is materially different than the current legislative scheme. Unlike the current scheme, at the time *Renaissance International* was

decided, there was no means by which a charity could file a notice of objection when revocation was proposed. The appeals process was added to the legislative scheme effective for notices of intention to revoke issued after June 12, 2005. *Renaissance International* was decided by this Court in 1982, which is long before an objection process was available for this type of dispute.

[83] Second, the Foundation submits that the Appeals Directorate is a separate tribunal from the Charities Directorate which issued the Revocation Proposal such that procedural defects before the Charities Directorate cannot be cured by the subsequent actions of the Appeals Directorate. This submission is not in accord with the statutory regime which contemplates a two-step process for a final decision of the Minister by way of a notice of confirmation. It is also worth noting that the notice of intent to revoke and the confirmation are both issued by the Minister (subsections 168(1) and (4) of the Act). Finally, as noted by this Court in *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557 at para. 82, subsequent steps in an administrative process can cure procedural defects made at an earlier stage. In my view, there is no basis upon which this would not hold true of the decision made in this case.

[84] Third, the Foundation submits that the Appeals Directorate has a limited mandate to vacate or confirm the Revocation Proposal and does not "cure the mistakes of the Charities Directorate" (appellant's memorandum at para. 49).

[85] I disagree with this submission. The mandate of the Minister in relation to this type of objection is very broad (subsections 165(3) and 168(4) of the Act). If the Minister concludes that

a mistake should be cured, the Minister certainly has the power to do this. It matters not whether the Minister takes this action through the Appeals Directorate or the Charities Directorate.

[86] Ultimately, the Foundation was informed of the case it had to meet through the decision-making process. As such, it cannot be said that there was a procedural defect in communicating to the Foundation the case it had to meet.

(4) Bias and abuse of discretion

[87] The Foundation submits that the Minister abused their discretion in order to punish the Foundation, and exhibited bias and prejudice in doing so.

[88] A valid claim for bias must be supported by "cogent evidence of a closed mind or of a predisposition against a party such that a reasonable person would conclude that the decision-maker would likely not decide fairly" (*Bergey v. Canada (Attorney General)*, 2017 FCA 30, 2017 C.L.L.C. 220-024 at para. 65).

[89] The Foundation has not come close to satisfying this test.

[90] The Foundation alleges that bias is evident from the Revocation Proposal because it did not address the representations of the Foundation and instead "replied with a fury" (appellant's memorandum at para. 42) that the Foundation:

> …shows no willingness to (a) comply with the requirements set out in the *Income Tax Act* with respect to its books and records, and (b) to implement actions which

> will ensure that due diligence is given in conducting its charitable activities, while at the same time ensuring that no undue benefit is conferred on any individual.
>
> (appeal book at p. 38)

[91] The response of the Minister in the Revocation Proposal does not exhibit bias. Rather, the Minister's conclusion is well supported by the record and shows that the Minister recognizes the importance of ensuring that registered charities comply with the Act.

[92] The Foundation also submits that the Minister exhibited bias during the appeals process in that issues of procedural fairness and natural justice were responded to by the Minister only in a confirmation proposal letter and not in the final notice of confirmation.

[93] I do not agree. There is no reasonable basis for claiming bias simply because the notice of confirmation did not provide further reasons. The Appeals Directorate outlined areas of concern in its letter of February 6, 2017 and invited further representations by the Foundation. It was entirely appropriate for the notice of confirmation to limit its response to noting that the Foundation did not respond to these concerns.

[94] Finally, the Foundation submits that the motivation of the Minister in issuing the Revocation Proposal was to avoid a trial in the Tax Court of Canada which would have been the procedure if the sanction had been to deny receipting privileges for one year. This bald claim regarding the motives of the Minister is unsupported by the evidence and should be rejected (*Joshi v. Canadian Imperial Bank of Commerce*, 2015 FCA 105, 474 N.R. 215 at para. 19).

(5) Conclusion

[95] In summary, I conclude that the Foundation's arguments concerning breaches of procedural fairness and natural justice are wholly without merit.

III. Disposition

[96] For the reasons above, I would dismiss the appeal with costs.

"Judith Woods"
J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-147-17
STYLE OF CAUSE:	ARK ANGEL FOUNDATION v. MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 31, 2018
REASONS FOR JUDGMENT BY:	WOODS J.A.
CONCURRED IN BY:	PELLETIER J.A. NEAR J.A.
DATED:	JANUARY 30, 2019

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