

Federal Court of Appeal



Cour d'appel fédérale

Date: 20100218

Docket: A-215-08

Citation: 2010 FCA 51

**CORAM: SEXTON J.A.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

**INTERNATIONAL PENTECOSTAL MINISTRY
FELLOWSHIP OF TORONTO (IPM)**

Appellant

and

**THE MINISTER OF NATIONAL REVENUE,
HER MAJESTY THE QUEEN**

Respondent

Heard at Toronto, Ontario, on February 18, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on February 18, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SEXTON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on February 18, 2010)

SEXTON J.A.

Background

[1] The Appellant was incorporated on November 8, 1990. It was registered as a charitable organization under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (“the ITA”) as of January 1, 1991. In November 2005, the Respondent undertook an audit of the Appellant for the 2002 and 2003 fiscal periods. The auditor concluded that the Appellant stood in contravention of a number of

its obligations under the *Act*, including the need to maintain adequate books and records, issue donation receipts, meeting a prescribed standard, accurately report all tax received gifts, and retain documents establishing its activities and expenditures outside Canada.

[2] On July 4, 2006, the Respondent notified the Appellant of the results of the audit and invited the Appellant to respond. The Appellant replied with a request for additional time to formulate its response. On September 26, 2006, the Respondent sent two letters to the Appellant. The first letter notified the Appellant of the Respondent's intent to revoke the Appellant's charitable status. The second letter granted the Appellant an extension to submit its representation until October 6, 2006.

[3] On October 5, 2006, the Appellant filed a Notice of Objection. The Notice of Objection stated that the Appellant had changed accounting firms and would again need more time to respond to the results of the audit. On February 8, 2008, the Respondent informed the Appellant of its intent to confirm the notice of intent to revoke, and allowed the Appellant until March 10, 2008 to make any further submissions. The Appellant replied on March 14, 2008 and explained discrepancies and errors in the receipts it issued, as well as problems with its books.

[4] On April 9, 2008, the Respondent wrote to the Appellant. It stated that it had reviewed the Appellant's subsequent submissions and that on the basis of the audit and subsequent correspondence, it confirmed the proposal to revoke the Appellant's charitable registration. The Appellant now seeks to appeal that revocation.

Issues

[5] The Appellant makes two arguments. First, it argues that the regulation of charities is *ultra vires* the federal Parliament because exclusive legislative authority with respect to the regulation of charities lies with the provinces. Therefore, the Respondent exceeded its jurisdiction and its decision is void *ab initio*. Second, it argues that the Respondent failed to observe its own guidelines when it decided to revoke the Appellant's charitable status without first attempting to address the non-compliance through education, a compliance agreement, and a sanction.

Analysis

1. Jurisdiction

[6] An allegation of lack of constitutional authority to make a decision is a true jurisdictional issue contemplated by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 at paragraph 59 ("Dunsmuir"). Jurisdictional issues like the instant are reviewable on a standard of correctness.

[7] The authority to make laws for the regulation of charities is held exclusively by the provinces under subsection 92 (7) of the *Constitution Act, 1867*. Under subsection 91 (3) of the *Constitution Act, 1867*, the Parliament of Canada has the authority to make laws for "the raising of Money by any Mode or System of Taxation." Therefore, the resolution of this case turns on whether the registration and deregistration of charities under the ITA relates to the regulation of charities under subsection 92 (7) or to taxation under subsection 91 (3).

[8] We have not been persuaded that there is any merit to the Appellant's argument that the provisions of the ITA dealing with the registration and deregistration of charities are an unconstitutional infringement on provincial legislative authority. In our view, these provisions relate, in their pith and substance, to federal taxation, and accordingly they are *intra vires* the Parliament of Canada under subsection 91 (3) of the *Constitution Act, 1867*. Both the advantages of registration and the drawbacks of revocation relate solely to the tax treatment of charities and their donors. They do not impermissibly affect the affairs of charities in any other way, nor do they impede provinces from otherwise regulating charities.

[9] We are therefore of the opinion that the Respondent acted within its jurisdiction when it revoked the Appellant's charitable status.

2. Did the Respondent fail to follow its own guidelines and err in so doing?

[10] The Appellant also argues that the Respondent ignored its own guidelines by revoking the Appellant's charitable status without encouraging compliance through education, sanctions, and a compliance agreement. The Respondent's exercise of the statutory discretion to revoke registration is reviewable on a standard of reasonableness.

[11] In this case, the Respondent provided specific reasons as to why the Appellant's practices failed to comply with the Act. Ample time was given to the Appellant to bring its practices into compliance. The Appellant failed to adequately respond.

[12] The Respondent's decision falls squarely within the range of acceptable outcomes. While the Appellant alleges that the Respondent failed to follow its own guidelines, on this record, it was reasonably open to the Minister to find the breaches sufficiently serious as to warrant revocation.

Conclusion

[13] We therefore hold that the Respondent's actions did not exceed its jurisdiction and were reasonable under the ITA. We would dismiss the appeal with costs to the Respondent.

“J. Edgar Sexton”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-215-08

**(APPEAL FROM THE NOTICE OF INTENT TO REVOKE, GHISLAINE LANDRY,
MANAGER, TAX AND CHARITIES APPEALS DIRECTORATE, DATED APRIL 9, 2008,
DOCKET NO. 0907774)**

STYLE OF CAUSE: INTERNATIONAL PENTECOSTAL
MINISTRY FELLOWSHIP OF
TORONTO (IPM) v. THE MINISTER
OF NATIONAL REVENUE AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 18, 2010

REASONS FOR JUDGMENT OF THE COURT BY: (SEXTON, EVANS & SHARLOW
J.J.A.)

DELIVERED FROM THE BENCH BY: SEXTON J.A.

APPEARANCES:

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