

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110307

**Dockets: A-36-11
A-37-11**

Citation: 2011 FCA 71

**CORAM: EVANS J.A.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

OPERATION SAVE CANADA TEENAGERS

Docket: A-36-11

Appellant

and

**MINISTER OF NATIONAL REVENUE
(CANADA REVENUE AGENCY)**

Respondent

AND BETWEEN:

REVIVAL TIME MINISTRIES INTERNATIONAL

Docket: A-37-11

Appellant

And

MINISTER OF NATIONAL REVENUE

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 7, 2011.

REASONS FOR ORDER BY:

EVANS J.A.

CONCURRED IN BY:

**DAWSON J.A.
TRUDEL J.A.**

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110307

**Dockets: A-36-11
A-37-11**

Citation: 2011 FCA 71

**CORAM: EVANS J.A.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

OPERATION SAVE CANADA TEENAGERS

Docket: A-36-11

Appellant

and

**MINISTER OF NATIONAL REVENUE
(CANADA REVENUE AGENCY)**

Respondent

AND BETWEEN:

REVIVAL TIME MINISTRIES INTERNATIONAL

Docket: A-37-11

Appellant

And

MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR ORDER

Introduction

[1] Operation Save Canada Teenagers (Operation Save) and the Minister of National Revenue (Minister) have each brought a motion in connection with the Minister's revocation of Operation Save's registration as a charity (Court File No. A-36-11).

[2] Revival Time Ministries International (Revival Time) and the Minister have brought materially identical motions in connection with the Minister's revocation of Revival Time's registration as a charity (Court File No. A-37-11).

[3] The motions of Operation Save and Revival Time request the reinstatement of their status as registered charities, and a stay of the revocation pending the issue and determination of notices of objection to the revocation.

[4] The Minister's motions request that the appeals to this Court of Operation Save and Revival Time against the revocations be quashed as being beyond its statutory jurisdiction.

[5] The Reverend Daniel Mokwe is the President of both Operation Save and Revival Time. These reasons apply to both files and a copy shall be inserted in both.

Background

[6] On November 16, 2010, the Minister issued to Revival Time a notice of intention to revoke its status as a registered charity pursuant to subsection 149.1(2) of the *Income Tax Act*, R. S. C.

1985, c. 1 (5th Supp.) (Act). The Notice set out the bases of the Minister's view, formed after conducting investigations, that Revival Time was not in compliance with the requirements of the Act for registration as a charity.

[7] Paragraph 168(2)(b) of the Act sets out the next step in the process, as relevant to the present proceedings.

168. (2) Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

...

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*, and on that publication of a copy of the notice, the registration of the charity or association is revoked

168. (2) Le ministre doit, dans le cas de l'alinéa a), et peut, dans les autres cas, publier dans la Gazette du Canada copie de l'avis prévu au paragraphe (1). Sur publication de cette copie, l'enregistrement de l'organisme de bienfaisance ou de l'association canadienne de sport amateur est révoqué. La copie de l'avis doit être publiée dans les délais suivants :

[...]

b) dans les autres cas, soit 30 jours après la mise à la poste de l'avis, soit à l'expiration de tout délai supérieur à 30 jours courant de la mise à la poste de l'avis que la Cour d'appel fédérale ou l'un de ses juges fixe, sur demande formulée avant qu'il ne soit statué sur tout appel interjeté en vertu du paragraphe 172(3) au sujet de la signification de cet avis

[8] Pursuant to this provision, the Minister published in the *Canada Gazette* on January 8, 2011, a copy of the Notice issued to Revival Time, which thereby ceased to be a registered charity as of that date.

[9] The facts relating to Operation Save are materially identical, except that the Notice was issued to it on November 23, 2010, and a copy was published in the *Canada Gazette* on January 15, 2011, when Operation Save's registration as a charity was revoked.

Motions by Operation Save and Revival Time

[10] On January 18, 2011, Operation Save and Revival Time filed motions to reinstate their registration as charities, and to stay the revocations pending the issue and determination of notices of objection.

[11] These motions must fail. Operation Save and Revival Time had not applied to the Court under paragraph 168(2)(b) for an extension of the 30 day period from the issue of the Notices to their publication in the *Gazette*. Since the Notices have already been published in the *Gazette*, and the registration of Operation Save and Revival Time as charities has been revoked, the time for applying for a stay of the publication of the Notices under paragraph 168(2)(b) has necessarily expired. The Act contains no other provision for a stay applicable to the present facts.

Motions by the Minister

[12] The Minister moves to quash the appeals by Operation Save and Revival Time to have the Notices of Intention set aside, on the ground that, on the present facts, there is no right of appeal against them.

[13] The only right of appeal to this Court from a decision by the Minister to revoke the registration of charitable status arises under subsection 172(3). However, an appeal under this provision only lies after the entity that was registered as a charity has served a notice of objection on the Minister pursuant to subsection 168(4), and the Minister either confirms the decision to revoke, or does not confirm or vacate it within 90 days from service of the notice of objection.

[14] Since rights of appeal are purely creatures of statute, and neither Operation Save nor Revival Time has yet issued a notice of objection, the Court has no jurisdiction at this time to entertain their appeals pursuant to paragraph 172(3)(a.1). Accordingly, the appeals must be quashed.

Order

[15] For the above reasons, the Court hereby orders:

- a. The motions of Operation Save and Revival Time to reinstate their registration as charities and to stay the revocations pending the issue and determination of notices of objection are dismissed; and
- b. The motions by the Minister to quash the appeals of Operation Save and Revival Time are granted and the appeals quashed, but without prejudice to their right to appeal under subsection 172(3), in accordance with subsection 168(4).

“John M. Evans”

J.A.

“I agree

Eleanor R. Dawson, J.A.”

“I agree

Johanne Trudel J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-36-11

STYLE OF CAUSE: Operation Save Canada Teenagers
and Minister of National Revenue
(Canada Revenue Agency)

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: EVANS J.A.

CONCURRED IN BY: DAWSON AND TRUDEL JJ.A.

DATED: March 7, 2011

WRITTEN REPRESENTATIONS BY:

Daniel Mokwe FOR THE APPELLANT

Carol Calabrese FOR THE RESPONDENT

SOLICITORS OF RECORD:

Operation Save Canada Teenagers FOR THE APPELLANT
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-37-11

STYLE OF CAUSE: Revival Time Ministries International
and Minister of National Revenue
(Canada Revenue Agency)

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: EVANS J.A.

CONCURRED IN BY: DAWSON AND TRUDEL JJ.A.

DATED: March 7, 2011

WRITTEN REPRESENTATIONS BY:

Daniel Mokwe FOR THE APPELLANT

Carol Calabrese FOR THE RESPONDENT

SOLICITORS OF RECORD:

Operation Save Canada Teenagers FOR THE APPELLANT
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada