

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120607

Docket: A-241-11

Citation: 2012 FCA 171

**CORAM: NOËL J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

SAGKEENG MEMORIAL ARENA INC.

Appellant

and

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

Respondents

Heard at Winnipeg, Manitoba, on June 7, 2012.

Judgment delivered from the Bench at Winnipeg, Manitoba, on June 7, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Winnipeg, Manitoba, on June 7, 2012)

STRATAS J.A.

[1] This is an appeal from the Minister's decision on May 24, 2011 to refuse to grant the appellant registration as a "charitable organization" under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).

[2] The parties are agreed that the Minister's exercise of discretion in this case was guided by the definition of "charitable organization" in section 149.1 of the Act, as interpreted by the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*, [1999] 1 S.C.R. 10.

[3] The Minister refused the appellant registration because the appellant did not satisfy him that it was a "charitable organization." In making this decision, the Minister applied the settled law to the facts before him. In these circumstances, we are to apply the deferential standard of reasonableness when assessing the Minister's decision: *International Pentecostal Ministry v. Minister of National Revenue*, 2010 FCA 51 at paragraph 6; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12.

[4] In support of its application for registration, the appellant relied primarily upon two documents: draft amended articles of incorporation pertaining to it and a draft agency agreement with Fort Alexander Holdings Inc., a company that was to assist it in its work. Broad statements of intention appear in these documents about the activities the appellant and Fort Alexander intended to perform.

[5] Several exchanges took place between the appellant and the Minister, leading up to the Minister's refusal to register the appellant as a "charitable organization." In many of these exchanges, the Minister stated that he was not satisfied with the information contained in the documents tendered by the appellant because it was insufficient and lacked detail.

[6] On more than one occasion, the Minister asked the appellant to provide him with detailed information showing that, among other things, the appellant's activities were focused on charitable objects and the appellant would devote all its resources to charitable activities. The Minister was also concerned about the involvement of Fort Alexander Holdings Inc. and whether the appellant would retain direction and control over its resources devoted to charitable activities. The draft articles of amendment and draft agency agreement tendered by the appellant did not satisfy these concerns.

[7] The appellant never provided the Minister with the information he needed. The Minister's concerns became the primary basis for his refusal to grant the appellant registration on May 24, 2011.

[8] We find that the Minister's concerns were founded upon the requirements set out in section 149.1 of the Act and the legal principles set out in *Vancouver Society, supra*. On the facts, the Minister was well within the range of acceptability and defensibility in requiring more and better information from the appellant. It is one thing to tender draft documents expressing aspirations; it is quite another to tender final documents expressing plans that are detailed and credible.

[9] In this regard, it must be recalled that when an organization is registered as a "charitable organization," it receives significant benefits. It is exempted from paying income tax and can issue tax receipts to donors: see subsections 110.1(1) and 118.1(1) of the Act. Before granting

registration, the Minister is entitled to require detailed and credible information responsive to the requirements of section 149.1, *Vancouver Society*, and any other applicable authority.

[10] The appellant also alleges procedural unfairness. At the end of the exchanges between the Minister and the appellant, the appellant submitted a letter dated April 18, 2011. In this letter, counsel for the appellant made submissions, invited the Minister to provide feedback, and expressed willingness to make changes to the draft articles of amendment. Counsel for the appellant did not ask for additional time to locate necessary information. On its face, the letter dated April 18, 2011 is an attempt to address the Minister's concerns. The appellant complains that the Minister did not reply to this letter and, instead, simply issued his final decision.

[11] In our view, there is no procedural unfairness in these circumstances. In fact, the Minister's conduct shows considerable fairness. Almost a year before his final decision, the Minister outlined his concerns to the appellant in an administrative fairness letter dated June 29, 2010. The Minister reiterated his concerns in a notice dated September 15, 2010 and a proposal letter on February 28, 2011 in which the Minister granted the appellant an extension of time to address his concerns. The Minister's concerns were consistent throughout. At an early stage, the appellant knew the case it had to meet and the Minister afforded it ample opportunity to meet that case.

[12] Therefore, we shall dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-241-11

**APPEAL FROM A DECISION OF THE MINISTER OF NATIONAL REVENUE DATED
MAY 24, 2011**

STYLE OF CAUSE: Sagkeeng Memorial Arena Inc. v. The
Minister of National Revenue and Her
Majesty the Queen

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: June 7, 2012

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Dawson, Stratas J.J.A.

DELIVERED FROM THE BENCH BY: Stratas J.A.

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