

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210721

Docket: A-224-19

Citation: 2021 FCA 146

**CORAM: WEBB J.A.
RENNIE J.A.
LEBLANC J.A.**

BETWEEN:

**TOMORROW'S CHAMPIONS
FOUNDATION**

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard by online video conference hosted by the registry on May 10 and 11, 2021.

Judgment delivered at Ottawa, Ontario, on July 21, 2021.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**RENNIE J.A.
LEBLANC J.A.**

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REASONS FOR JUDGMENT

WEBB J.A.

[1] This appeal arises under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) as a result of the decision of the Minister of National Revenue (Minister) denying the application of Tomorrow's Champions Foundation (TCF) for registration as a registered Canadian amateur athletic association (RCAAA) under the Act.

[2] For the reasons that follow, I would allow this appeal.

[3] Although the appeals were not consolidated, the appeal of Athletes 4 Athletes Foundation (A4A) from the refusal of the Minister to register it as a RCAA was heard at the same time as this appeal. As noted in 2021 FCA 145, to the extent that the same issues were raised in both appeals, the reasons as set out in 2021 FCA 145 will be adopted and applied in this appeal.

I. Background

[4] TCF is a society incorporated under the former *Society Act*, RSBC 1996, c 433 (replaced by the *Societies Act*, SBC 2015, c 18).

[5] The purposes of TCF are set out in section 2 of its constitution and are identical to the purposes of A4A:

2. The purposes of the Society are:

a) to develop, fund, promote and carry on activities, programs and facilities for the promotion of amateur athletics in Canada on a nationwide basis as its exclusive purpose and exclusive function;

b) to solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purposes of the Society;

c) to disburse funds and property to, and for the benefit of associations, clubs and societies the primary purpose and primary function of which is the promotion of amateur athletics in Canada and for and to such other purposes and activities as are authorized for registered Canadian amateur athletic associations under the *Income Tax Act*;

d) to perform other functions as are ancillary and incidental to the attainment of the purposes and the exercise of the powers of the Society.

[6] On August 29, 2014, TCF submitted an application to be registered as a RCAA. In its application, TCF stated that it would be “providing funding for infrastructure that will lower the barriers to entry and increase access to athletics for Canadian youth”. In particular, TCF stated:

We have determined that we can promote amateur athletics on a nation-wide basis by providing facilities and programs such as renting fields and providing uniforms and equipment. We will identify teams and regions in Canada where there is a need for financial support to enable the local team to operate effectively. Our program coordinator will begin by engaging regional and local clubs and disseminating information on our objectives. A selection committee which will consist of individuals with knowledge and experience in the particular field, will review applications and written submissions along with recommendations from our coordinator. We will then apply our funds and support in ways that will have the greatest impact for a broad group of amateur athletes. Support will be for facilities (i.e. paying for field time or paying for field improvements and maintenance), equipment (purchasing equipment to be loaned out) and services (paying a professional athlete, sport psychologist or trainer to provide advice and guidance to athletes and coaches). [...]

[7] Essentially, the difference between A4A and TCF is that, while A4A indicated that it would be providing funding directly to athletes, TCF indicated it would be assisting teams and clubs by paying for facilities, equipment, and services.

[8] The response of the Canada Revenue Agency (CRA) to TCF’s application is dated the same date as the letter sent to A4A, March 18, 2015 (the First Letter). In this letter, the CRA set out its concerns related to the application of TCF. In many respects, the concerns were the same as those expressed to A4A.

[9] In addressing its concerns related to the proposed activities of TCF, the CRA stated:

Providing this type of assistance to local clubs or teams can promote and encourage amateur athletics at a grassroots level, by facilitating access to amateur sports for all Canadians. However, it is our position that the Applicant's involvement in promoting amateur athletics is indirect in that it appears to restrict itself to providing assistance in the form of funding and equipment to clubs or teams that require financial assistance. It is our view that this mode of operation it [*sic*] not analogous to that of a Canadian Amateur Athletic Association that would typically qualify for registration because the Applicant does not carry on any of the exclusive functions identified earlier. For instance, the Applicant does not promote or regulate a particular sport; it does not directly provide or operate training programs for athletes, coaches and/or referees; it does not operate a national team or sanction competitions; nor does it represent Canada at an international sport federation.

[10] The CRA expressed an additional concern that the funding that would be provided to clubs or teams would not be provided to member organizations.

[11] The CRA also expressed concerns that TCF had not sufficiently demonstrated that it would operate on a nationwide basis. TCF had a presence in Vancouver, but based on its proposed operating budget, in the CRA's view, TCF did not have sufficient capacity to operate programs on a national level.

[12] TCF responded to the First Letter. The response did not alleviate the CRA's concerns and the Minister issued a Notice of Refusal of Registration (the Notice) dated February 5, 2016.

[13] Generally, the Minister reiterated the same concerns that were raised in the First Letter. The Minister also acknowledged that "the Act does not use the word 'direct' as such" but stated that, in the Minister's view, "only those activities which directly promote amateur athletics in

Canada on a nationwide basis can fulfill the requirement of exclusiveness of purpose and function, as provided by the Act”.

[14] The Minister was concerned that TCF’s “funding program for local clubs and teams falls outside of the scope of the exclusive purpose of promoting amateur athletics in Canada on a nationwide basis because it is not analogous to any of the exclusive purposes and functions of a CAAA that can qualify for registration”.

[15] The Minister also noted that:

Generally, in order to satisfy the nationwide requirement, an association qualifying as a RCAA will already be active in each Canadian province and territory; or it will be active in a significant number of jurisdictions covering most of the Canadian population while having concrete plans to expand to a nationwide scale. We generally consider an organization to be operating on a nationwide basis when it already has a broad-based presence throughout a significant number of localities across Canada and those local organizations decide to federate themselves at a national level.

[16] Following the receipt of the Notice, TCF submitted a notice of objection under subsection 168(4) of the Act on May 4, 2016. On June 12, 2019, TCF filed an appeal to this Court under subsection 172(3) of the Act, as the Minister had not responded to the notice of objection.

II. Issues and standards of review

[17] TCF, in its memorandum, submitted that the Minister erred by:

- (a) fettering her discretion with respect to eligibility for registration as an RCAA;

- (b) incorrectly interpreting the terms “exclusive” , “nationwide” and “amateur athletics” in paragraph (d) of the definition of CAAA in s. 149.1(1) of the *ITA*; and
- (c) taking into account an irrelevant consideration.

[18] Since this is an appeal under subsection 172(3) of the Act, the standards of review as provided in *Housen v. Nikolaisen*, 2002 SCC 33 are applicable (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 37). The standard of review is palpable and overriding error for any question of fact or any question of mixed fact and law for which there is no extricable question of law. In this particular case, there are extricable questions of law with respect to the proper interpretation of the definition of CAAA. Therefore, for the extricable questions of law, the standard of review is correctness.

III. Analysis

[19] At the hearing of this appeal, TCF adopted and relied on the submissions made by A4A with respect to the interpretation of the definition of a CAAA in the Act. The findings with respect to the interpretation of the definition of a CAAA, as set out in the reasons provided in the appeal of A4A are equally applicable here and there is no need to repeat them. Although TCF also referred to the interpretation of “amateur athletics”, its argument was that the Minister erred by refusing the registration of TCF on the basis that its activities were not analogous to the activities of RCAAs that had been accepted for registration. This argument was addressed in the reasons provided in the appeal for A4A.

[20] With respect to TCF's issue related to fettering of discretion, the issue of whether the Minister has a broad discretion to refuse the registration of a CAAA as a RCAA was also addressed in the reasons provided in the appeal for A4A and are equally applicable here.

[21] With respect to TCF's proposed activities and, in particular, its proposed funding to assist clubs and teams, the issue of whether a particular activity must directly promote amateur athletics was addressed in the reasons provided in the appeal for A4A. As noted in those reasons, there is no requirement in the Act that a particular activity directly promote amateur athletics. In the Notice, the Minister acknowledges that "providing funding to local clubs or teams may promote amateur athletics" and therefore the provision of funds directly to clubs or teams does not, in and of itself, disqualify an organization from registration as a RCAA.

[22] As noted in the reasons provided in the appeal for A4A, the Minister also referred to paragraph (e) of the definition of a CAAA and noted that TCF "did not discharge itself of its obligation to prove this element as it has not demonstrated that it is involved in directing or otherwise verifying how its funds are spent by the local clubs or teams". As noted in the reasons provided in the appeal for A4A, this also appears to be the Minister conducting an audit rather than a determination of whether TCF should qualify for registration as a RCAA.

[23] TCF raised an additional argument in its memorandum in relation to the nationwide requirement. TCF stated, at paragraph 60 of its memorandum:

60. The CRA and the Minister similarly adopted an incorrect and unduly restrictive interpretation of "nationwide", essentially requiring a CAAA to "already [have] a broad-based presence throughout a significant number of

localities across Canada”, preferably through “federate[d]” local member organizations. In particular, the CRA and the Minister appear to expect that “a CAAA will be incorporated as a not for profit corporation under the federal regime.”

[footnote references have been omitted]

[24] The reference to a “broad-based presence” was addressed in the reasons provided in the appeal for A4A. The additional issue raised by TCF is in the last sentence, which relates to the jurisdiction under which the particular organization is formed. While the Crown, in its memorandum, addressed the reference to a “broad-based presence”, it did not address TCF’s submission related to the applicable jurisdiction.

[25] The condition in paragraph (a) of the definition of CAAA is that the association “was created under any law in force in Canada”. Therefore, there is no requirement that a CAAA must be formed under a federal law. An organization incorporated under the former *Society Act* of British Columbia will satisfy this requirement.

[26] The reference by TCF to the irrelevant consideration is the statement by the Minister that there were similarities and linkage between TCF and A4A. The language used in the First Letter and in the Notice for both A4A and TCF is substantially similar. However, the difference between the two organizations, *i.e.*, TCF’s proposed funding to assist clubs and teams versus A4A’s proposed funding to athletes, was noted by the CRA and the Minister in their letters. That the two organizations have raised common issues for consideration is also evident by the fact that the appeals were heard at the same time. There is no basis to find that there is any

particular error committed by the CRA or the Minister in reviewing and addressing the two applications at the same time.

IV. Conclusion

[27] In my view, the Minister erred in:

- (a) treating its list of acceptable purposes and functions as being the only acceptable purposes and functions for an organization to qualify as a CAAA;
- (b) denying the registration of TCF as a RCAA on the basis that the Minister was unable to draw an analogy between providing financial assistance to teams and clubs and any of the exclusive purposes and functions of an existing CAAA that has been registered as a RCAA; and
- (c) reading into the definition of CAAA a requirement that an eligible organization must directly promote amateur athletics.

[28] To the extent that the Minister may also have based the refusal to register TCF as a RCAA on the basis that TCF does not have a physical presence in each province or territory or that TCF was formed under the former *Society Act* of British Columbia, then the Minister erred in doing so.

[29] TCF has asked that the matter be referred back to the Minister. I agree that the matter should be referred back to the Minister. The role of the Minister is to determine whether a particular organization satisfies the requirements of a CAAA and therefore should be registered as a RCAA.

[30] In this case, the Minister will need to determine whether, in light of the above findings with respect to the definition of a CAAA, TCF has established that its stated functions will promote amateur athletics in Canada on a nationwide basis. In making this determination, the Minister will be making certain findings of fact and mixed fact and law.

[31] I would therefore allow the appeal, set aside the decision of the Minister and remit the matter back to the Minister for redetermination in accordance with these reasons. Subsequent to the hearing of the appeal, the parties submitted a letter stating that they had agreed on the costs to be awarded to the successful party and the amount agreed upon for TCF, rounded to the nearest dollar, was \$3,560. The Minister shall pay costs, fixed in the amount of \$3,560, to TCF.

“Wyman W. Webb”

J.A.

“I agree
Donald J. Rennie J.A.”

“I agree
René LeBlanc J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-224-19

STYLE OF CAUSE: TOMORROW'S CHAMPIONS
FOUNDATION v. MINISTER OF
NATIONAL REVENUE

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REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: RENNIE J.A.
LEBLANC J.A.

DATED: JULY 21, 2021

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